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# QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

# QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

## Report of the Working Group on Enforced or Involuntary Disappearances

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* In view of its length, the present document is being issued in the original language only, the Conference Services Division of the United Nations Office at Geneva having insufficient capacity to translate documents that greatly exceed the 32-page limit recommended by the General Assembly (see Commission resolution 1993/94, para. 1).

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## Introduction

1. The present report of the Working Group on Enforced or Involuntary Disappearances is submitted pursuant to Commission on Human Rights resolution 1995/38, entitled "Question of enforced disappearances". 1/ In addition to the specific tasks entrusted to the Working Group by the Commission in this resolution, the Group has also taken into account other mandates stemming from a number of resolutions adopted by the Commission, entrusted to all special rapporteurs and working groups. These are explained in chapter I, section A, "Legal framework for the activities of the Working Group". All these tasks have been given due attention and consideration by the Working Group in the course of 1995.

2. During the year under review, the Working Group continued to carry out the activities it has undertaken since its establishment. Its original role, which it has described in previous reports, is to act as a channel of communication between families of the disappeared persons and the Governments concerned, with a view to ensuring that sufficiently documented and clearly identified individual cases are investigated and the whereabouts of the disappeared persons clarified. Since its inception, the Working Group has analysed thousands of cases of disappearance and other information received from Governments and non-governmental organizations, individuals and other sources of information from all over the world in order to ascertain whether such material falls under the Working Group's mandate and contains the required elements; entered cases into its database; transmitted those cases to the Governments concerned, requesting them to carry out investigations and to inform the group about their results; forwarded the Governments' replies to relatives or other sources; followed up investigations carried out by the Governments concerned, as well as the inquiries made by the relatives or other agencies or organizations; maintained a considerable correspondence with Governments and the sources of information in order to obtain details on the cases and the investigations; and examined allegations of a general nature concerning specific countries with regard to the phenomenon of disappearances.

3. In addition to its original mandate, the Working Group has been entrusted by the Commission with various other tasks. In particular, the Working Group is to monitor States' compliance with their obligations deriving from the Declaration on the Protection of All Persons from Enforced Disappearance. States are under an obligation to take effective measures to prevent and terminate acts of enforced disappearance, by making them continuing offences

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1/ Since its creation in 1980, the Working Group has submitted a report to the Commission annually, starting at the Commission's thirty-seventh session. The document symbols of the last 14 reports are as follows: E/CN.4/1435 and Add.1; E/CN.4/1492 and Add.1; E/CN.4/1983/14; CN.4/1984/21 and Add.1 and 2; E/CN.4/1985/15 and Add.1; E/CN.4/1986/18 and Add.1; E/CN.4/1987/15 and Corr.1 and Add.1; E/CN.4/1988/19 and Add.1; E/CN.4/1989/18 and Add.1; E/CN.4/1990/13; E/CN.4/1991/20 and Add.1; E/CN.4/1992/18 and Add.1; E/CN.4/1993/25 and Add.1; E/CN.4/1994/26 and Corr.1 and 2 and Add.1; E/CN.4/1995/36.

under criminal law and establishing civil liability. The Declaration also refers to the right to a prompt and effective judicial remedy, as well as unhampered access of national authorities to all places of detention, the right to habeas corpus, the maintenance of centralized registers of all places of detention, the duty to investigate fully all alleged cases of disappearance, the duty to try alleged perpetrators of disappearance before ordinary (not military) courts, the exemption of the criminal offence of acts of enforced disappearance from statutes of limitations, special amnesty laws and similar measures leading to impunity. The Working Group reminded the Governments of these obligations not only in the context of clarifying individual cases, but also by taking action of a more general nature. During the year under review, it drew the attention of Governments and non-governmental organizations to the general or specific aspects of the Declaration; it discussed with representatives of Governments and non-governmental organizations how to solve specific problems in the light of the Declaration and how to overcome obstacles to its implementation.

4. As in previous years, the Working Group has continued to apply the urgent action procedure in cases that allegedly occurred within three months preceding the receipt of the report by the Group, and has also promptly intervened with Governments in cases in which relatives of missing persons, or other individuals or organizations which have cooperated with the Group, or their legal counsel, have been subjected to intimidation, persecution or other reprisals.

5. The total number of cases being kept under active consideration as they have not yet been clarified now stands at 43,508. In 1995, the Working Group received some 824 new cases of disappearance in 27 countries. The number of countries with outstanding cases of alleged disappearances was 63 in 1995.

6. As in the past, the present report reflects only communications or cases examined before the last day of the third annual session of the Working Group, which was 17 November 1995. Urgent action cases which may have to be dealt with between that date and the end of the year, as well as communications received from Governments after 17 November 1995, will be reflected in the Working Group's next report.

7. In 1995, the Working Group continued to undertake a review of its methods of work, which it had begun in 1994, bearing in mind, in particular, its responsibilities under the Declaration on the Protection of All Persons from Enforced Disappearance. It was guided by resolution 1995/38, paragraph 20, in which the Commission on Human Rights requested the Working Group to again identify obstacles to the realization of the provisions of the Declaration, to recommend ways of overcoming those obstacles and to pursue, in this respect, its dialogue with Governments and institutions concerned. The Group's general recommendations and comments are contained in chapter I.F on the implementation of the Declaration. Its country-specific observations, if any, are to be found at the end of the respective country chapters in part II of the present report. The Commission will find the Group's revised methods of work in annex I to this report.

8. One member of the Group, Mr. Diego García-Sayán, carried out a visit to El Salvador in order to continue a process, begun last year, of examining,

with the Governments concerned, what to do with the large number of very old cases of disappearance which remain pending on the Group's books, taking into account, of course, the legitimate human rights concerns of the families. The Working Group intends to pursue such discussions with other Governments in the future.

9. Finally, the Working Group feels obliged to draw the Commission's attention to another matter. The Group fully understands, particularly in a situation of serious financial crisis, the efforts of the United Nations to reduce unnecessary costs and expenditures. In a spirit of cooperation, the Group agreed, therefore, to reduce its forty-seventh session from eight working days to five, and to postpone its visit to Colombia from 1995 to 1996.

10. The Working Group has no understanding, however, of the way in which the decision to reduce costs is being implemented. If one wishes to save money by reducing the size of the reports of working groups, special rapporteurs and other expert bodies established by the Commission, there should, first of all, be clear guidelines on the page length which take into account the different natures and types of work of the different mandates. While 32 pages may be a reasonable limit for certain reports, it is certainly not the case for the report of this Working Group, which deals with almost 70 countries. Secondly, these guidelines should be brought to the attention of the respective entities before they start to draft their reports to the Commission.

11. It is unacceptable to the Working Group to be told a few days before the adoption of its report that a 32-page limit for reports may now be enforced, when this had never been the case in the past. In showing once again its willingness to cooperate, the Group made great efforts to cut its report down to some 100 pages. Any further reduction would have been irreconcilable with its duty to carry out its mandate and to report to the Commission in a responsible manner.

# I. ACTIVITIES OF THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES IN 1995

## A. Legal framework for the activities of the Working Group

12. The legal framework for the activities of the Working Group has been extensively described in its reports to the Commission on Human Rights at its forty-first to fifty-first sessions.

13. In resolution 1995/38, the Commission, having expressed concern that the practice of a number of States could run counter to the Declaration on the Protection of All Persons from Enforced Disappearances, and deeply concerned at the increase and spread of the practice of enforced disappearances in various regions of the world, decided to extend for a three-year period the mandate of the Working Group, in order to enable the Group to take into consideration all such information as might be communicated to it on cases brought to its attention, while maintaining the principle of annual reporting by the Group.

14. Also in its resolution 1995/38, the Commission requested the Group to report on its work to the Commission at its fifty-second session and to continue to discharge its mandate discreetly and conscientiously; encouraged the Group to submit to the Commission all information it deemed necessary and any specific recommendations it might wish to make regarding the fulfilment of its tasks; invited the Group to identify obstacles to the realization of the Declaration on the Protection of All Persons from Enforced Disappearance, to recommend ways of overcoming those obstacles, and to pursue in that respect its dialogue with Governments and institutions concerned; also invited the Group to continue to consider the question of impunity, in close collaboration with the rapporteurs appointed by the Sub-Commission on Prevention of Discrimination of Minorities and with due regard for the relevant provisions of the Declaration; and requested the Group to pay particular attention to cases of children subjected to enforced disappearance and children of disappeared parents and to cooperate closely with the Governments concerned to search for and identify these children.

15. In the same resolution, the Commission deplored the fact that some Governments had never provided substantive replies concerning enforced disappearances alleged to have occurred in their countries, nor acted on the recommendations concerning them made in the reports of the Working Group, and urged Governments to cooperate with the Working Group and to reply expeditiously to the Group's requests for information; to intensify their cooperation with the Working Group on any action taken pursuant to recommendations addressed to them by the Group; to take legislative or other steps to prevent and punish the practice of enforced disappearance; to take steps to ensure that, when a state of emergency is introduced, the protection of human rights is guaranteed, particularly as regards the prevention of enforced disappearances; and to take steps to protect the families of disappeared persons against any intimidation or ill-treatment to which they might be subjected. The Commission also encouraged States to provide concrete information on measures taken to give effect to the Declaration, as well as obstacles encountered.

16. The Commission also reminded Governments of the need to ensure that their competent authorities conducted prompt and impartial inquiries whenever there was reason to believe that an enforced disappearance had occurred in a territory under their jurisdiction and recalled that, if allegations were confirmed, perpetrators should be prosecuted. The Commission, for the ninth time, repeated its request to the Secretary-General to ensure that the Working Group received all necessary assistance, in particular the staff and resources it required to perform its functions.

17. The Working Group has, furthermore, carefully considered and, where appropriate, acted on provisions of the following resolutions which amplify the Group's mandate as contained in resolution 20 (XXXVI) and 1995/38.

18. In its resolution 1995/40, the Commission invited once again the working groups and the special rapporteurs to pay attention, within the framework of their mandates, to the situation of persons detained, subjected to violence, ill-treated or discriminated against for having exercised the right to freedom of opinion and expression. Indeed, many of the disappearances reported to the Working Group may have been caused by the fact that persons have exercised this right. To the extent possible, the Group has tried to reflect in its report relevant information received on this subject.

19. In its resolution 1995/43, the Commission urged all thematic special rapporteurs and working groups to address as appropriate the consequences of the acts, methods and practices of terrorist groups. The Working Group has taken into consideration information received in this connection and reflected it in the appropriate country subsections.

20. In its resolution 1995/53, the Commission invited its special rapporteurs and representatives, as well as working groups to continue to include in their recommendations, whenever appropriate, proposals for specific projects to be realized under the programme of advisory services.

21. In its resolution 1995/57, the Commission called upon relevant rapporteurs, working groups and experts, in accordance with their mandates, to seek information on situations which could lead to internal displacement and to include relevant information and recommendations thereon in their reports to the Commission. The Working Group has reflected any information received in this connection in the relevant country subsections.

22. In its resolution 1995/75, the Commission requested all representatives of United Nations human rights bodies, as well as treaty bodies monitoring the observance of human rights, to continue to take urgent steps, in conformity with their mandates, to help prevent the occurrence of intimidation, and reprisals. The Commission further requested such representatives to include in their respective reports a reference to allegations of intimidation or reprisal, as well as an account of action taken by them in that regard. The Working Group has reflected in the country subsections cases in which it has taken action in the framework of its prompt intervention procedure.

23. In its resolution 1995/79, the Commission recommended that within their mandates special rapporteurs, special representatives and working groups of the Commission and the Sub-Commission pay special attention to the plight of

street children. The Working Group has paid close attention to this resolution, but has received no allegations concerning the disappearance of street children in 1995.

24. In its resolution 1995/80, the Commission called upon all special representatives, special rapporteurs, independent experts and thematic working groups to take fully into account the recommendations contained in the Vienna Declaration and Programme of Action. In section II, paragraph 62, of the Vienna Programme of Action, the World Conference on Human Rights, welcoming the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance, called upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearances. The World Conference on Human Rights reaffirmed that it was the duty of all States, under any circumstances, to make investigations whenever there was reason to believe that an enforced disappearance had taken place on a territory under their jurisdiction and, if allegations were confirmed, to prosecute its perpetrators. In accordance with the Vienna Declaration and Programme of Action and the request of the Commission, the Working Group has further developed its efforts to monitor the compliance by States with the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance.

25. In its resolution 1995/85, the Commission requested, among others, human rights treaty bodies, other special rapporteurs responsible for various human rights questions and United Nations bodies and organs to cooperate with and assist the Special Rapporteur on violence against women in the performance of the tasks and duties mandated, in particular to respond to requests for information on violence against women, its causes and its consequences; and in its resolution 1995/87, the Commission called on the thematic special rapporteurs and working groups to include in their reports gender-disaggregated data. Such data have, to the extent possible, been included in the statistical summary of countries found in annex III to the present report.

26. In its resolution 1995/88, the Commission invited the special rapporteurs, special representatives and working groups of the Commission, acting within their mandates, to seek information, where appropriate, on problems resulting in mass exoduses of populations or impeding their voluntary return home and to include such information in their reports. The Working Group has taken information received in this connection into account and reflected it, where appropriate, in the relevant country chapters.

## B. Meetings and missions of the Working Group

27. The Working Group held three sessions in 1995. The forty-fifth session was held in New York from 5 to 9 June, and the forty-sixth and forty-seventh sessions were held at Geneva from 21 to 25 August and from 13 to 17 November, respectively. With regard to the third annual session, in view of the serious financial situation facing the Organization at the end of the year and in response to an appeal from United Nations Headquarters for working groups and committees meeting in late 1995 to reduce the length of their sessions, the Working Group, in a spirit of cooperation, made an exceptional effort to

reduce its forty-seventh session from eight working days to five which, unfortunately, prevented the Working Group from meeting with non-governmental organizations at that session. During its 1995 sessions, the Working Group met with representatives of the Governments of Chile, Colombia, Guatemala, Honduras, India, the Islamic Republic of Iran, Morocco, South Africa and Yemen as well as with the National Commission for Human Rights Mexico. The Group also met with representatives of human rights organizations, associations of relatives of missing persons and families or witnesses directly concerned with reports of enforced disappearances.

28. As in previous years, the Working Group examined information on enforced or involuntary disappearances received from both Governments and non-governmental organizations and decided, in accordance with its methods of work, on the transmission of such reports or observations received thereon to the Governments concerned. It also requested Governments to provide complementary information whenever necessary for the clarification of cases.

29. In September 1995, one member of the Working Group Mr. Diego García-Sayán, carried out a visit to El Salvador.

30. The Government of Colombia addressed an invitation to the Working Group to visit the country. The Working Group agreed to undertake this visit in the course of 1996.

31. On 21 July 1995, the Working Group addressed a letter to the Governments of India, Iraq and Turkey, expressing its interest in visiting these countries during the course of 1996, in order to intensify its dialogue with the authorities of the countries most directly concerned with the issue of disappearances, as well as with the representatives of the families of those people reportedly disappeared. At the time of the adoption of the present report, no reply to its request had yet been received by the Working Group from Iraq or Turkey. However, the Government of India declined to invite the Working Group.

## C. Communications with Governments

32. In 1995, the Working Group transmitted 824 new cases of enforced or involuntary disappearance to the Governments concerned; 359 of the cases transmitted were reported to have occurred in 1995; 163 were transmitted under the urgent action procedure, of which 39 were clarified during the year. The majority of newly reported cases which allegedly occurred in 1995 relate to Algeria, Colombia, Mexico, Pakistan, the Sudan, Turkey and Sri Lanka. Many of the other cases received were referred back to the sources as they lacked one or more elements required by the Working Group for their transmission, or because it was not clear whether they fell within the Working Group's mandate; other cases were considered inadmissible within the context of that mandate.

33. By letters dated 31 January and 28 July 1995, the Working Group reminded the Governments concerned of reports of disappearances transmitted during the previous six months under the urgent action procedure. By letter dated 28 April 1995, the Working Group informed Governments of the dates of its three annual sessions for 1995.

34. By letter dated 23 June 1995, the Working Group reminded all Governments of the total number of outstanding cases remaining before it and, when requested, retransmitted the summaries of those cases or the diskettes containing those summaries to them.

35. As has been its practice in the past, following each of its three sessions, the Working Group informed the Governments of decisions it had made with respect to cases of disappearance in their countries. To this end, the Working Group sent letters on 23 June, 30 August and 15 December 1995 to the Governments concerned informing them whether a case had been clarified, on the basis of information provided by the source or the Government; whether a case had been placed under the six-month rule; retransmitted to the Government updated with new information from the source; or whether the information submitted by the Government with respect to a specific case was insufficient to consider the case clarified. The Group also transmitted to Governments concerned observations provided by the sources on the Government's replies.

36. On 30 August 1995, the Working Group transmitted to the Governments concerned the allegations which it had received from non-governmental organizations concerning, in particular, obstacles to the implementation of the Declaration.

### D. Communications with other United Nations offices

37. Taking into account the ever-increasing number of United Nations field operations with human rights components, during 1995 the Working Group sought to establish contact with these offices in an effort to take advantage of their unique position on the ground in order to improve its information flow with regard to disappearances. At its forty-fifth session, the Working Group decided to address a letter to the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA), seeking to establish an interchange of information between the Working Group and the mission with respect to individual cases of enforced or involuntary disappearances in Guatemala. To this end, the Working Group has developed a fruitful dialogue with MINUGUA on both newly reported and pending cases of disappearance.

38. The Working Group also sought information from the human rights field operation in Rwanda on the situation with regard to disappearances in that country. This information is reflected in the Rwanda country chapter.

### E. Communications with non-governmental organizations and relatives of missing persons

39. The Working Group has continued to attach great importance to its contacts with non-governmental organizations and relatives of missing persons, and maintained close contact with sources of information throughout the year, informing them on a regular basis of the state of its investigation into cases of concern to them, as well as the replies it had received from Governments in this respect. The Group also invited these organizations to present information at its three annual sessions and to submit observations relating

to the general situation affecting the phenomenon of disappearances in countries of importance to them. The Group received a great deal of information orally and in writing from them.

40. At the same time, however, the Working Group has noted with concern that in some cases non-governmental organizations have failed to maintain contact with their source, or in other cases, have relegated them to their archives, thus seriously hindering efforts by the Working Group to follow up on individual cases.

41. In July 1995, the Working Group addressed a letter to a number of non-governmental organizations concerning the implementation of the Declaration in countries of concern to them, requesting them to provide the Group with any pertinent information, in particular, concrete examples of obstacles encountered in this regard. This information is reflected in the appropriate country chapters.

42. As in previous years, the Working Group received reports and expressions of concern from non-governmental organizations, associations of relatives of disappeared persons and individuals about the safety of persons actively engaged in the search for missing persons, in reporting cases of disappearance or in the investigation of cases. In some countries, the mere fact of reporting a disappearance entailed a serious risk to the life or security of the person making the report or to his or her family members. In addition, individuals, relatives of missing persons and members of human rights organizations were frequently harassed and threatened with death for reporting cases of human rights violations or investigating such cases.

## F. Implementation of the Declaration on the Protection of All Persons from Enforced Disappearance

43. The proclamation by the General Assembly on 18 December 1992 in its resolution 47/133 of the Declaration on the Protection of All Persons from Enforced Disappearance was a milestone in the united efforts to combat the practice of disappearance. Many proposals and recommendations which the Working Group has adopted over the years and included in its annual reports have been reflected in the Declaration. In accordance with the Declaration, the systematic practice of disappearance is of the nature of a crime against humanity and constitutes a violation of the right to recognition as a person before the law, the right to liberty and security of the person, and the prohibition of torture, and it also violates or constitutes a grave threat to the right to life. States are under an obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance, in particular to make them continuing offences under criminal law and to establish civil liability.

44. The Declaration also refers to the right to a prompt and effective judicial remedy, as well as unhampered access of national authorities to all places of detention, the right to habeas corpus, the maintenance of centralized registers of all places of detention, the duty to investigate fully all alleged cases of disappearance, the duty to try alleged perpetrators of disappearances before ordinary (not military) courts, the exemption of

the criminal offence of acts of enforced disappearance from statutes of limitations, special amnesty laws and similar measures leading to impunity.

45. In its resolutions 1993/35, 1994/39 and 1995/38, the Commission on Human Rights, invited all Governments to take appropriate legislative or other steps to prevent and punish the practice of enforced disappearances, with special reference to the Declaration, and to take action to that end nationally, regionally and in cooperation with the United Nations. In the same resolutions, the Commission requested the Working Group to take into account the provisions of the Declaration, and invited it to cite in future reports any obstacles to the proper application of the Declaration and to recommend means of overcoming them.

46. Despite various efforts by the Working Group to remind Governments of their obligation to implement the provisions of the Declaration by taking appropriate legislative, administrative, judicial or other measures, only very little progress has been made in practice. With some exceptions, States have not begun to take consistent steps to incorporate in their national legislation the principles set out in the Declaration. The Working Group wishes to stress that the obligation to implement the Declaration does not only apply to States where acts of enforced disappearances actually occurred in the past or continue up to the present day. In particular, legislative and other preventive measures shall be taken by all States in order to ensure that acts of disappearance will not occur in the future.

47. With a view to focusing the attention of Governments more effectively on the relevant obligations deriving from the Declaration, the Working Group decided, at its forty-seventh session, to adopt the following general comments on those provisions of the Declaration that might need further explanation in the light of the experience of the Working Group in its communications with Governments.

General comment on article 3 of the Declaration

48. Article 3 of the Declaration on the Protection of All Persons from Enforced Disappearance stipulates that "each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction". This is a broad obligation which is assumed by States and is primarily an obligation to do something. This provision cannot be interpreted in a restrictive sense, since what it does is to serve as the general model for the purpose and nature of the measures to be taken, as well as for the content of the international responsibility of the State in this regard.

49. The purpose of the measures to be taken is clear: "to prevent and terminate acts of enforced disappearance". Consequently, the provision calls for action both by States in any territory under its jurisdiction of which acts of enforced disappearance might have occurred in the past and by States in which such acts have not occurred. All States must have appropriate machinery for preventing and terminating such acts and are therefore under an obligation to adopt the necessary measures to establish such machinery if they do not have it.

50. With regard to the nature of the measures to be taken, the text of the article clearly states that legislative measures are only one kind. In referring to "legislative, administrative, judicial ..." measures, it is clear that, as far as the Declaration is concerned, it is not enough to have formal provisions designed to prevent or to take action against enforced disappearances. It is essential that the entire government machinery should adopt conduct intended for this purpose. To this end, administrative provisions and judicial decisions play a very important role.

51. The article also refers to "other measures", thus making it clear that the responsibility of the State does not stop at legislative, administrative or judicial measures. These are mentioned only by way of example, so it is clear that States have to adopt policy and all other types of measures within their power and their jurisdiction to prevent and terminate disappearances. This part of the provision must be understood as giving the State a wide range of responsibility for defining policies suited to the proposed objective.

52. It is, however, not enough for legislative, administrative, judicial or other measures to be taken, since they also have to be "effective" if they are to achieve the objective of prevention and termination. If the facts showed that the measures taken were ineffective, the international responsibility of the State would be to take other measures and to adapt its policies so that effective results would be achieved. The main criterion for determining whether or not the measures are suitable is that they are effective in preventing and, as appropriate, terminating acts of enforced disappearance.

53. Consequently, the provision contained in article 3 must be understood as the general framework for guiding States and encouraging them to adopt a set of measures. It must be understood that the international responsibility of States in this regard arises not only when acts of enforced disappearance occur, but also when there is a lack of appropriate action to prevent or terminate such acts. Such responsibility derives not only from omissions or acts by the Government and the authorities and officials subordinate to it, but also from all the other government functions and mechanisms, such as the legislature and the judiciary, whose acts or omissions may affect the implementation of this provision.

General comment on article 4 of the Declaration

54. Article 4.1 of the Declaration on the Protection of All Persons from Enforced Disappearance stipulates that "all acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness". This obligation applies to all States regardless of whether acts of enforced disappearance actually take place or not. It is not sufficient for Governments to refer to previously existing criminal offences relating to enforced deprivation of liberty, torture, intimidation, excessive violence, etc. In order to comply with article 4 of the Declaration, the very act of enforced disappearance as stipulated in the Declaration must be made a separate criminal offence.

55. The preamble of the Declaration defines the act of enforced disappearance "in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches

or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law". States are, of course, not bound to follow strictly this definition in their criminal codes. They shall, however, ensure that the act of enforced disappearance is defined in a way which clearly distinguishes it from related offences such as enforced deprivation of liberty, abduction, kidnapping, incommunicado detention, etc. The following three cumulative minimum elements should be contained in any definition:

(a) Deprivation of liberty against the will of the person concerned;

(b) Involvement of governmental officials, at least indirectly by acquiescence;

(c) Refusal to disclose the fate and whereabouts of the person concerned.

56. The term "offences under criminal law" refers to the relevant domestic criminal codes that are to be enforced by competent ordinary courts, i.e. neither by any special tribunal, in particular military courts (art. 16.2 of the Declaration), nor by administrative agencies or tribunals. The persons charged with the offence of enforced disappearance shall enjoy all guarantees of a fair trial established in international law (art. 16.4 of the Declaration).

57. It falls into the competence of States to establish the appropriate penalties for the offence of enforced disappearance in accordance with their domestic legal standards. They shall, however, take into account the "extreme seriousness" of acts of enforced disappearance. In the absence of mitigating circumstances, appropriate penalties, therefore, in principle mean prison sentences.

58. According to article 4.2, "mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance". This provision must, however, be read in conjunction with article 18 which states:

> "1. Persons who have, or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.
>
> "2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account."

## G. Special process on missing persons in the territory of the former Yugoslavia

59. Subsequent to the report presented to the fifty-first session of the Commission on Human Rights by Mr. Manfred Nowak, expert member of the Working Group on Enforced or Involuntary Disappearances in charge of the mandate (E/CN.4/1995/37), and owing to the importance of the issue of missing persons in the territory of the former Yugoslavia, the Commission on Human Rights adopted resolution 1995/35 entitled "Special process dealing with the problem of missing persons in the territory of the former Yugoslavia". It, thus, entrusted the expert with an independent mandate, the first one established by the Commission which is of a country-specific and thematic character dealing with one particular violation of human rights, the phenomenon of enforced or involuntary disappearances within the frontiers of the former Yugoslavia. With a view to determining the fate of thousands of missing persons and relieving the suffering of their families, the expert decided to continue using the methods of work of the Working Group on Enforced or Involuntary Disappearances, adapted to the specific situation of the former Yugoslavia.

60. The activities of Mr. Nowak are summarized in his report to the Commission at its present session (E/CN.4/1996/36).

## II. INFORMATION CONCERNING ENFORCED OR INVOLUNTARY DISAPPEARANCES IN VARIOUS COUNTRIES REVIEWED BY THE WORKING GROUP

### Afghanistan

61. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Afghanistan.

62. The two outstanding cases concern a Jordanian journalist who reportedly disappeared in Jalalabad, province of Nangarhar, in 1989 while on assignment, and an American citizen of Afghan origin who allegedly disappeared in 1993 when he was on a visit to Afghanistan.

63. Although many more cases of disappearance may have occurred in Afghanistan, in particular during the period 1978 to 1979, individual cases have not been brought to the Working Group's attention to allow it, in accordance with its methods of work, to take action.

64. Despite a retransmittal, at the Government's request, of the outstanding cases, no information has been received by the Working Group from the Government of Afghanistan with regard to these cases. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared persons.

### Algeria

65. During the period under review, the Working Group transmitted to the Government of Algeria 103 newly reported cases of disappearance, 20 of which reportedly occurred in 1995, and 2 of which were sent under the urgent action procedure. During the same period, it clarified one case when it was reported that the person concerned had been released and it retransmitted one case, updated with new information from the source.

66. The one case transmitted in the past reportedly occurred in 1994 and concerned a 38-year-old man who was allegedly abducted from his home by the security forces.

67. All of the newly reported cases occurred between 1993 and 1995. The security forces were alleged to be responsible for all the arrests and subsequent disappearances, which reportedly occurred throughout the country, although mainly in Algiers. A number of those disappeared are reported to have been members or sympathizers of the Islamic Salvation Front (FIS). One case concerned a British resident who was reportedly detained upon his arrival at the airport in Algiers. Another case concerned a person holding dual Algerian and French citizenship. The victims were from a variety of professions including medical doctors, journalists, university professors, students, civil servants and farmers.

68. During the period under review, the Government of Algeria provided information on three individual cases. In one case the person concerned had been detained by the security services and released after 48 hours; with regard to the 2 other cases, the persons concerned had not been arrested nor had they been the subject of any judicial proceedings.

Observations

69. The Working Group expresses its concern at the recent increase in violence in Algeria and, in particular, at the high level of alleged disappearances brought to its attention. It wishes to remind the Government of its responsibilities under the Declaration to take effective measures to prevent, terminate and punish all acts of enforced disappearance.

Angola

70. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Angola. The Group considered three cases clarified on the basis of information previously submitted by the Government in which it reported that the persons concerned had participated in the 1977 coup d'état, were taken prisoner, put on trial, convicted and executed by firing-squad. The source subsequently confirmed that their relatives had been executed; however, they denied that the persons concerned had been tried or that they had participated in the coup.

71. The four cases which remain pending on the Working Group's books concern four men who were allegedly arrested in 1977 by the Angolan security forces, in particular by DISA (Angolan information and security forces). Two of them were reportedly arrested because they were suspected of supporting UNITA.

72. With regard to the four outstanding cases, during the period under review the Government of Angola informed the Working Group that the efforts undertaken by the Government to bring to light the fate of these four persons had been to no avail. The police and administrative archives in the towns of Huambo and Onjiva had been totally destroyed. The Permanent Representative of Angola to the United Nations Office at Geneva stated that he himself, together with a team from the Attorney-General's Office, had gone to these towns, but had not been able to find any additional information. The Government further stated that the war had been extremely violent and that documents had been vandalized and burned. It said that, unfortunately, no information on the fate of these four persons could ever be obtained. The Government also said that it sympathized with the suffering of the relatives and friends of the disappeared persons.

Argentina

73. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Argentina.

74. The vast majority of the 3,462 reported cases of disappearance in Argentina occurred between 1975 and 1978 under the military Government, during its campaign against left-wing guerrillas and their sympathizers.

75. During the same period, a number of non-governmental organizations addressed themselves to the Working Group with regard to their ongoing quest to have the fate of the persons who disappeared in Argentina brought to light, in particular demanding that the Argentine State present any documentation and other information in its possession on the human consequences of the so-called

war against subversion, and especially the consequences of such operations for persons on whose whereabouts as disappeared persons information had been requested.

76. In this connection, there are a number of cases before the courts about which the Working Group has been amply informed during the course of 1995. It was brought to the Working Group's attention that a decision was taken by a judge calling for the State to preserve the documentation and to make it available to the courts. It was reported that the Government of Argentina had appealed against the decision, but that the Federal Chamber of Appeals in Administrative Matters had upheld it. The Government is said to have subsequently filed an extraordinary appeal to submit the appellate court's decision to the Supreme Court.

77. In a legal memorandum (amicus curiae) a non-governmental organization supported the request, submitted by family members to the Buenos Aires Federal Court for Criminal and Correctional Matters on 27 June 1995, to require the President of the Republic and the ministers with administrative jurisdiction over this question to supply, within a specific time period, all relevant information about the circumstances surrounding the detention or abduction and the fate of the persons who disappeared from the Naval Engineering School between 1976 and 1983. The right to the truth is said to belong not only to the relatives, but to society as a whole.

78. Abundant information was submitted to the Working Group concerning statements made in the Argentine press by former military officials, in which they are reported to have stated that, between 1976 and 1978, some 1,500 to 2,000 detainees were thrown alive from naval airplanes into the ocean. A number of organizations made reference to the situation of children abducted or born while the mother was in detention.

79. By notes verbales dated 5 October and 8 November 1995, the Government of Argentina submitted its reply to the allegations transmitted to it by the Working Group. The Government stated that the policy adopted by the Government was to investigate and try those responsible, while setting limits to judicial investigations in the interest of consolidating democracy during a period of transition. Among other measures, the National Commission on the Disappearance of Persons (CONADEP) was established. CONADEP was given the express mission of "clarifying questions relating to the disappearance of persons in Argentina" for which purpose it was charged with "ascertaining the fate or whereabouts of disappeared persons and any other circumstances relating to their whereabouts". The report produced by CONADEP, Nunca Más, describes the disappearance of the evidence that would have made it possible to locate the disappeared persons.

80. In its conclusions, the report notes that "no legal records were kept on the unlawful situation in which those aberrant deeds were perpetrated, as a result of which no information was handed on to subsequent constitutional Governments and administrations nor were any records left in court files". In Argentina it has so far not been possible to obtain any other facts than those contained in the files of CONADEP, which contain the statements by surviving victims or relatives.

81. The government department responsible for preserving and completing the archives has repeated its standing invitation to all persons who are able to provide information to submit it to the department. Similarly, in a public statement made on 25 April 1995, the head of the General Staff of the Army, Lieutenant-General Martin Balza, invited any of his subordinates with information that could shed light on the events to submit it through institutional channels.

82. In the judicial sphere, legitimate applications for clarification of the fate of disappeared persons have been examined, despite the fact that criminal proceedings may no longer be brought by virtue of Acts 23,492 and 23,521 and because of the amnesty decrees. The requisite procedural steps concerning the cases in question are being carried out even though in the case of one of them the court handling the matter, the National Court of Criminal Appeal and Federal Correctional Court in the federal capital, turned down the application even though it had examined the merits of the amicus curiae brief referred to in the written reply.

83. As regards the return of children who were abducted or born during their mother's captivity, Decree No. 1306/92 established the National Commission for the Right to an Identity, whose aim is to activate the search for disappeared children and to determine the whereabouts of abducted and disappeared children whose identity is unknown, as well as of children born while their mothers were unlawfully deprived of their liberty, and of other children who are unaware of their identity because they were separated from their biological parents for various reasons.

84. The Commission carries out systematic and thorough investigations in response to requests from the Association of Grandmothers of the Plaza de Mayo or of its own initiative. In all, the Commission holds 49 files, 24 of which were opened recently. Of the 49, 41 are being processed, 7 have already been closed and 1 directed elsewhere. Twenty-five files concerned cases of the children of disappeared persons, 22 trafficking in children and 1 file concerns a question of filiation. The Association of Grandmothers of the Plaza de Mayo has requested information about 125 individuals and the Commission itself 26.

85. As an annex to the above-mentioned statement, the Government of Argentina provided the Working Group with a list containing the names of children who have so far been identified, located and returned to their respective families.

Observations

86. The Group understands how difficult it is to gather all the information necessary to determine the whereabouts of thousands of victims of enforced disappearance, and is following with interest the efforts being made by the National Commission for the Right to an Identity to identify and find disappeared children.

87. However, most of the outstanding cases of disappearance have remained unelucidated. For this reason, the Group recalls that, in accordance with the provisions of the Declaration on the Protection of All Persons from Enforced

Disappearance, the conduct of investigations "thoroughly and impartially" (art. 13) remains the Argentine State's international obligation "for as long as the fate of the victim of enforced disappearance remains unclarified" (art. 13, para. 6).

88. This obligation implies that it is the State's duty to pursue such investigations and clarifications by all the means at its disposal and also to abstain from any action likely to delay or render such investigations or clarifications difficult. For this reason, the Government should refrain from taking legal steps that hamper the results of legal proceedings designed to preserve information or documentation that could be of use in determining the whereabouts of disappeared persons.

Bolivia

89. During the period under review, no new cases of disappearances were transmitted by the Working Group to the Government of Bolivia.

90. The majority of the 48 cases of disappearance reported to the Working Group occurred between 1980 and 1982, periods when general and often massive violence spread around the country, generated by two military coups d'état. Twenty of these cases have been clarified.

91. Despite a full retransmittal in July 1995, at the request of the Government of Bolivia, of the outstanding cases, no further information has been received from the Government concerning these cases. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared persons.

Brazil

92. During the period under review, the Working Group transmitted three newly reported cases of disappearances to the Government of Brazil. One case occurred in 1994 and two in 1995; all were sent under the urgent action procedure. During the same period it retransmitted one case, updated with new information from the source.

93. The majority of the 57 cases of disappearance in Brazil reported to the Working Group occurred between 1969 and 1975, under the military Government, in particular during the guerrilla warfare in the Araguaia region.

94. The three newly reported cases are all said to have occurred in Rio de Janeiro and to have been carried out by members of the military police. One of the persons concerned is reported to be a lawyer and leader of the civil servants union at the National Library. The other two cases concern persons who are alleged to have been detained by uniformed members of the military police and taken in a vehicle to an unknown destination.

95. During the period under review, the Government of Brazil provided information on one outstanding case in which it reported that the police investigation into the subject's disappearance had not yet been concluded and that there were ongoing efforts to try and determine the person's whereabouts. It stated that there were no indications of any participation of the army or

police into the disappearance, but that there was reason to believe that the subject might have been involved with drugs. The submitting source, however, has informed the Group that the lawyer working for the subject's family has reported that no evidence has been produced to support the claim of his involvement with drugs. The Government reported that the investigation into the case was being followed by a public prosecutor and non-governmental organizations active in the field of human rights in Rio de Janeiro.

96. Last year the Working Group sent a letter to countries with a number of very old cases of disappearance pending on the Group's books, in which the Group sought to examine, together with the Government concerned, what to do with such cases, taking into account, of course, the legitimate human rights concerns of the families. On 2 October 1995, the Government of Brazil addressed a letter to the Chairman of the Working Group forwarding to him a copy of the bill submitted by the Government to Congress which deals with the recognition as dead of the persons who were missing in connection with their participation or presumed participation in political activities in the period from 2 September 1961 to 15 August 1979. The bill provides for the wife or husband, or female or male companion, descendant, ascendant or collateral relative until the fourth grade, to request the registration of a death certificate. Once the death is recognized, under the terms of the bill the above-mentioned persons may request compensation.

Observations

97. The Working Group welcomes the initiative by the Government of Brazil to submit to the Congress a draft law which refers to the procedure for the declaration of presumed death of persons subjected to enforced disappearance for political reasons, during the period from 2 September 1961 to 15 August 1979. The Group takes note with appreciation that, in various steps of the procedure established by this draft law, the participation of the families is foreseen which, in the Group's judgement, is an essential requisite. The Group will follow closely the process of implementation of this draft law, should it be promulgated, and wishes to assure the Government of Brazil of its readiness to assist the Government in whatever way it may deem necessary.

## Burkina Faso

98. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Burkina Faso.

99. The three outstanding cases of disappearance reported to the Working Group concerned two soldiers and a university professor, all of whom were reportedly arrested in 1989, together with 27 other persons, on charges of having participated in an alleged conspiracy against the Government.

100. Despite several reminders, no information has ever been received by the Working Group from the Government regarding these cases. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared persons.

## Burundi

101. During the period under review, the Working Group transmitted 14 newly reported cases of disappearance to the Government of Burundi, all of which occurred in 1994.

102. All of the 31 previously reported cases of disappearance in Burundi occurred in Bujumbura in November and December 1991, following attacks against the Government in the capital and the north-western provinces of Cibitoke and Bubanza. The disappeared persons, of Hutu origin, were reportedly arrested by members of the security forces, dominated by the Tutsi minority. Most of them were later held at Mura and at paratroopers' barracks in Bujumbura, while others allegedly disappeared while in custody at the headquarters of the gendarmerie's special investigations brigade, in Bujumbura.

103. The newly reported cases of disappearance allegedly concern Hutus, most of whom had reportedly been assembled and held by members of the security forces in the playing field of the Ecole technique supérieure in Bujumbura. These persons, reportedly suspected of possessing arms, are said to have been arrested and taken away to an unknown destination by members of the armed forces. Another case of disappearance relates to a colonel, responsible for military schools and the Training Centre of the Burundese Army, who was reportedly abducted as he was coming out of the house of one of his colleagues, where he went to collect documents before leaving for a seminar abroad.

104. During the period under review information of a general nature was brought to the Working Group's attention. The recent cases of disappearances brought to the knowledge of the Working Group on Enforced or Involuntary Disappearances in 1995 are said to continue to testify to the worsening climate of violence and internal strife prevailing in many provinces of Burundi, including the capital, Bujumbura, in the aftermath of the failed putsch of 21 October 1993, the murder of the first democratically elected President of Burundi, and the mass killings which followed. Due to ethnic tensions between Hutu and Tutsi and to the prevailing impunity, and despite the curfew proclaimed throughout the country on 18 June 1995, it is estimated that up to 800 civilians are killed every month, and three to four members of the military lose their lives every day as a result of attacks by unidentified armed groups.

105. Due to the confrontation between the army and armed groups and to the cleansing operations undertaken by the military in the northern suburbs of Bujumbura such as Kamenge, up to several tens of thousands of people, mainly of Hutu origin, have allegedly fled to seek refuge in the surrounding hills, without proper shelter, water or food, or have been dispersed within the country. It was alleged that during these operations many people were killed or disappeared. A number of dead bodies were later found in the hills. In other rural areas of the country, especially in the north, many Tutsi, fleeing killings by Hutus, have reportedly found refuge in camps for internally displaced persons.

106. Despite the Convention of Government of 10 September 1994 agreed upon by the coalition Government, no effective measure has reportedly yet been

implemented to end impunity or bring to justice the perpetrators of killings, acts of torture or disappearance, in violation of article 14 of the Declaration on the Protection of All Persons from Enforced Disappearance. No reform has been undertaken so far to redress the failings of the judicial system or restructure the Burundese armed forces and the police.

107. So far, no measures have reportedly been taken to end the impunity enjoyed by the armed forces. With respect to the judiciary, the present administrative structure is said to be far from adequate to prosecute properly all those responsible for the latest human rights violations. The main obstacles reportedly lie in the lack of human and financial resources, the lack of balance in ethnic representation, and the poor standards for impartiality and independence.

108. Although several reminders have been sent, no information has ever been received by the Working Group from the Government of Burundi with regard to these cases of disappearance. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared persons.

Observations

109. The Working Group is deeply concerned at reports on the worsening climate of violence and internal strife prevailing in many provinces of Burundi, and at the lack of effective measures to end impunity or bring to justice perpetrators of acts of enforced disappearance. It wishes to remind the Government of its obligation under the Declaration to prevent, terminate and punish all acts of enforced disappearance.

110. The Working Group, in particular, stresses the obligation of the Government, under articles 13 and 14 of the Declaration, thoroughly and impartially to investigate all allegations of enforced disappearance and to bring to justice all perpetrators.

## Cameroon

111. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Cameroon.

112. All of the six cases reported to the Working Group occurred in 1992. The cases concerned 5 youngsters aged 13 to 17, including 3 brothers, who were reportedly seen being taken into police custody in Bamenda in February 1992 at the time of the arrest of leaders of the Cameroon Anglophone Movement, and over 40 peasants, following a peaceful demonstration. The father of the three brothers also disappeared, following his inquiries to determine the whereabouts of his children.

113. During the period under review, no information was received by the Working Group from the Government of Cameroon concerning these cases. The Working Group is, therefore, unable to report on the fate or whereabouts of the disappeared persons.

Chad

114. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Chad.

115. The majority of the six cases of disappearance reported to the Working Group occurred in 1991 and one case in 1983. The latter was submitted by a relative of the victim and concerned a member of the Democratic National Union who was reportedly taken prisoner in July 1983 in the context of clashes between government troops and opposition forces which took place at Faya-Largeau. The other cases concerned members of the Hadjerai ethnic group who had reportedly been arrested on 13 October 1991 by the Chadian security forces. Their detention is said to have taken place following an announcement by the authorities that an attempt by a section of the Chadian armed forces to overthrow President Idriss Deby had been thwarted. Soldiers loyal to the Government are said to have killed and arrested many civilians, solely because they came from the Hadjerai ethnic group.

116. During the period under review, no new information was received from the Government of Chad with regard to the outstanding cases. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared persons.

Chile

117. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Chile. During this period, the Working Group considered clarified 21 cases which concerned 20 persons detained by the armed forces and the carabineros in September and October 1973 and one person detained by the Military Intelligence Service in June 1976. The remains of 17 persons were found and identified as a result of tests carried out by the Forensic Medicine Department of Santiago, and were returned to their relatives. In the four other cases, the death of the missing persons was established through judicial proceedings in which a comparison was made between the victim's fingerprints noted as unidentified in the autopsy records on file in the Forensic Medicine Department and those on the civil register file. During the same period, the Working Group retransmitted 17 cases, updated with new information from the source.

118. The vast majority of the 912 reported cases of disappearance in Chile occurred between 1973 and 1976 under the military Government. They concerned political opponents of the military dictatorship, from different social strata, most of them activists in the Chilean leftist parties. Disappearances were carried out by members of the army, the air force, the carabineros and persons acting with the acquiescence of the authorities.

119. The National Truth and Reconciliation Commission (Comisión Nacional de Verdad y Reconciliación), set up by the civilian Government in April 1990 to investigate serious human rights violations during the period of military rule, concluded that 957 persons had disappeared following their detention by the army or security forces. Since the restoration of civilian Government, some civilian court judges have endeavoured to pursue investigations into

disappearances to clarify the facts and establish responsibility. Forensic identification of the remains recovered from mass graves by the Forensic Medicine Department of Santiago are continuing, in spite of the 1978 Amnesty Law which impedes the prosecution of those responsible for the extrajudicial executions and disappearances.

120. During the period under review, information of a general nature concerning the obstacles found in the application of the Declaration on the Protection of All Persons from Enforced Disappearance at the national level was received from non-governmental organizations. With reference to article 13 of the Declaration, it has been stated that, despite the efforts which have been made since the restoration of democracy, there are still serious difficulties in investigating and in punishing those responsible for the hundreds of enforced disappearances that took place during the period of military Government. Although it has been possible to determine the fate of a number of those who disappeared, it is stated that only one case has reached the stage of final judgement within the judicial system, which is evidence of the serious difficulties still being experienced in securing the trial of those responsible.

121. With regard to article 18 of the Declaration, it has been stated that both the Decree-Law on Amnesty of 1978, which is currently in force, and the power to exert pressure still held by the security forces, as a result of the restrictions imposed by the military regime, are affecting the judicial system and are preventing the progress made in establishing the truth from leading to any possibility of punishing those responsible for enforced disappearances. In this connection, it is reported that, on 27 December 1994, the Supreme Court of Justice applied the 1978 Decree-Law on Amnesty in a trial in which the enforced disappearance of 70 persons was being investigated.

122. With reference to article 16, paragraph 2, of the Declaration, it has been reported that the Supreme Court is continuing to decide conflicts of competence in favour of the military courts when those reported to be responsible for enforced disappearances are members of the armed forces, the carabineros or the police. The military courts are said to be rapidly ordering the filing of cases under the 1978 Decree-Law on Amnesty, without carrying out the necessary investigation of the evidence.

123. It is reported that the most important step taken in recent months to establish criminal responsibility was the conviction of General Manuel Contreras Sepúlveda (retired) and Brigadier Pedro Espinoza Bravo, in the assassination of Orlando Letelier, former Minister of Foreign Affairs, assassinated in Washington in 1976. The outcome of this case is said to have reinforced the autonomy and independence of the judiciary.

124. With reference to article 19 of the Declaration, it is reported that the National Agency for Compensation and Reconciliation, established in February 1992, has continued to grant financial compensation to the relatives of victims of enforced disappearances mentioned in the report of the National Truth and Reconciliation Commission of 1991 (the Rettig Report). This compensation consists primarily in the granting of monthly pensions, accommodation in low-cost housing and scholarships, authorized under the 1992 Compensation Law.

125. During the period under review, the Government of Chile sent replies on seven individual cases of disappearance, in which it informed the Working Group that the death of these persons had been judicially established through legal testimonies, even though their remains could not be found. In four cases, the Government reported that the investigation carried out by the National Agency for Compensation and Reconciliation concluded that the fate suffered by these persons had been one of extrajudicial executions by forces belonging to the carabineros de Chile, and by civilians. Their corpses were seen floating in a river. Investigations carried out by judges in the courts of first instance had been dismissed in 1981 by military courts in pursuance of Legislative Decree No. 1291 concerning amnesty. With regard to the three other cases, the Government reported that, despite not having been able to establish the final whereabouts of the remains of these persons, the investigations carried out by the National Agency for Compensation and Reconciliation concluded that they were victims of extrajudicial executions carried out by military personnel and carabineros. These persons were taken to a bridge, shot and their bodies thrown into a river. A number of witnesses stated that they had seen the bodies floating. Lastly, the Government reported that there is an ongoing judicial investigation into the personal responsibility of the servicemen concerned for the offences committed.

126. The Government of Chile also sent a reply to the allegations received by the Working Group and submitted to it on the obstacles encountered in the application of the Declaration on the Protection of All Persons from Enforced Disappearance at the national level. This information supplemented the background material in the Working Group's possession on the work and powers of the National Agency for Compensation and Reconciliation. The Government reported that the National Agency, under its charter, is required to promote and contribute to actions designed to determine the whereabouts and the circumstances surrounding the disappearance of missing detainees and of persons whose remains have not been located despite the existence of legal recognition of their death. Given its legal terms of reference, it has had to distinguish between presumption and proof as regards the fate of the victims and the circumstances surrounding their disappearance, on the basis of the final whereabouts of their remains. Numerous investigations carried out by the National Agency have led it to the conclusion that, apart from the circumstances of the victims' fate and the causes of their disappearance, it will not always be possible to determine the final whereabouts of their remains. Factors such as the passage of time, the occurrence of irreversible physical events and, in most cases, the total lack of background information justifying further investigation, constitute the main obstacles to the National Agency's tasks of finding the remains of victims so that they can be recovered by their families.

127. The National Agency is required to bear in mind at all times, while carrying out its duties, that the right of family members to locate the remains of persons reported missing is an inalienable right. Consequently, irrespective of the declared opinion of the Agency or any other State-controlled body that it is reasonable to consider that the circumstances of the fate suffered by a victim have been elucidated, the right of the families to find their remains, and hence the obligation of the State - and of the Agency - to promote efforts conducive to that aim, is not precluded, exhausted or forfeited. Every case has to be resolved separately, paying

attention to its specific characteristics and in the light of the background information compiled by independent research. According to the National Agency, it is not possible at present to lay down strict or pre-established parameters or criteria on the subject. The Agency takes a decision on each case only after its investigations have been completed, conscientiously giving due weight to the whole range of material assembled before making a pronouncement.

128. The Government further reported that the National Agency is required by law to maintain absolute reserve regarding its investigations so long as they have not been definitively completed. For this reason, it is not always able to supply to the relatives comprehensive information about the subject of the investigation, the facts ascertained and the final conclusions drawn in each situation once all the possibilities of investigation have been exhausted. Lastly, in the Agency's opinion, the recording of the death of a victim in the relevant register is not the only factor to be considered in reaching a decision on a case. Indeed, its conclusions are adopted on the basis of all the background material, clues and presumptions it has succeeded in putting together in the course of its investigations. More than 68 cases in the Agency's archives continue to be classified as special investigations into unresolved cases of missing detainees, even though - according to the relevant public register - they are regarded as deceased by virtue of court declarations of presumed death. In only 13 of these cases has it to date been concluded that the circumstances of the fate of the victims or the final whereabouts of their remains have been ascertained.

129. At its forty-seventh session, the Working Group met with representatives of the Government of Chile and engaged in an exchange of views with regard to the best way to deal with the very old cases which remain on its books.

Observations

130. The Group appreciates the cooperation of the Government of Chile and is supporting and following with interest the efforts being made by the National Agency for Compensation and Reconciliation to determine the whereabouts of disappeared persons, and in particular to compensate the family members of victims in accordance with article 19 of the Declaration on the Protection of All Persons from Enforced Disappearance.

131. Nevertheless, the Group notes with concern that certain interpretations of the 1978 Amnesty Law by the judicial system are seriously undermining the Chilean State's ability to comply with its international obligation to conduct investigations "thoroughly and impartially" (art. 13) "for as long as the fate of the victim of enforced disappearance remains unclarified" (art. 13, para. 6). The Group is similarly concerned by the continuing tendency to refer to the military courts cases involving the criminal investigation of persons alleged to have perpetrated an act of enforced disappearance, since such action is at variance with the provisions of article 16, paragraph 2, of the Declaration, which specifically states that acts of this nature shall not be tried by military courts.

China

132. During the period under review, the Working Group transmitted to the Government of China three newly reported cases of disappearance, all of which allegedly occurred in 1995. All three cases were transmitted under the urgent action procedure. During the same period, the Working Group clarified 21 cases; 19 on the basis of information previously submitted by the Government, and 2 in which the source had established the whereabouts of the persons concerned.

133. Most of the 56 cases of disappearance reported to have occurred in China took place between 1988 and 1990. The majority of the persons alleged to have disappeared were Tibetans engaged in activities in favour of Tibetan independence. Reportedly, some of them disappeared after being arrested for writing or singing national poems or songs. Nineteen of these cases concerned a group of Tibetan monks who had reportedly been arrested in Nepal, interrogated by Chinese officials while in detention and, allegedly, turned over to the Chinese authorities at the Jatopani border. Other victims were human rights activists involved in pro-democracy activities. Three of the reported cases concerned persons who disappeared after the incidents in Beijing in 1989.

134. The newly reported cases of disappearance are said to have occurred in Tibet, and concern a six-year-old boy who was allegedly recognized as the reincarnation of the tenth Panchen Lama by the Dalai Lama on 4 May 1995, and the boy's parents, who are alleged to have been taken from their village by members of the police.

135. During the period under review, the Government of China provided information on six cases of disappearance, three of which had been clarified at the forty-fourth session of the Working Group; the other three concern the allegations of the disappearance of the boy who was reportedly recognized as the reincarnated Panchen Lama and his parents. In connection with the latter three cases, the Government submitted a lengthy reply in which it stated that "there has never been any case of ... kidnapping and disappearance of the family of the reincarnated child" and that the disappearance is a "mere fabrication by the Dalai Lama group" for political purposes. The process for selecting a reincarnated child was described. Since 1989, when the Panchen Lama passed away, the Government of China had been engaged in a search for the reincarnated child. Just as the selection process had entered its final stage, the Dalai Lama intervened by arbitrarily announcing his own choice. The Government stated that this was done for political purposes.

Colombia

136. During the period under review, the Working Group transmitted 33 newly reported cases to the Government of Colombia, 16 of which occurred in 1995. Of these newly reported cases, 20 were transmitted under the urgent action procedure. During the same period the Group clarified two cases in which it was reported that the subject's body had been found.

137. In accordance with Commission on Human Rights resolution 1995/75, the Working Group sent four "prompt intervention" cables to the Government of

Colombia on behalf of persons who had allegedly been subjected to acts of intimidation or harassment. These include members of the Association of Relatives of Disappeared Detainees, as well as relatives and witnesses to the arrest of persons subsequently disappeared who have publicly denounced the cases and given testimony before the judicial authorities.

138. The majority of the 949 reported cases of disappearance in Colombia have occurred since 1981, especially in Bogotá and regions where the level of violence is highest. Among them there are persons belonging to civic or human rights groups that had publicly denounced abuses by members of the security forces or paramilitary groups. The number of cases in the Working Group's files is much lower than the figures handled by the national non-governmental organizations. This is due, to a large extent, to the fact that in many cases the persons are found dead a few days after the disappearance. With regard to other cases, it has not been possible for the relatives or acquaintances of the missing persons to establish a link between the disappearance and the activities of government forces or groups associated with them.

139. The cases transmitted this year occurred mainly in the departments of Antioquia (9), Caldas (5), César (5), Norte de Santander (4), Valle (3), Santander (2), Atlántico (1), Bolívar (1), Cauca (1), Córdova (1), Cundinamarca (1). The forces alleged to be responsible were the Army (15), the police (6), paramilitary groups (6), men in plain clothes believed to be linked to security forces (4), the DHS (2).

140. During the period under review, a number of non-governmental organizations transmitted information of a general nature concerning the obstacles found in the application at the national level of the Declaration on the Protection of All Persons from Enforced Disappearance. With respect to articles 14 and 16 of the Declaration, it was stated that the continuous assignment of cases of human rights violations to the military jurisdiction facilitates impunity and that the Supreme Judicature Council, the body empowered to settle conflicts of jurisdiction between civil and military tribunals, usually decides in favour of the latter. It was also asserted that, in violation of the provisions of article 16.1 of the Declaration, officials accused of committing human rights violations are not suspended from their duties during the proceedings against them.

141. The armed forces continue to exercise judicial police functions under decree No. 1810 of 1992 and, therefore, to carry out detentions and raids. The decree is alleged to have facilitated acts of enforced disappearance and to have been used to hinder or divert investigations, becoming a source of impunity.

142. With respect to articles 5 and 19 of the Declaration, it was asserted that financial compensation may be obtained only in cases where there is a decision of the Human Rights Committee or of the Inter-American Commission on Human Rights, followed by a conciliation procedure before an inter-ministerial committee. If no agreement is reached, victims have no possible way to express their disagreement with the offer made by the Government. It was also reported that a recent bill laid before Congress would limit reparation to the granting of financial compensation.

143. It was asserted that, in violation of the provisions of article 13.4 of the Declaration, a campaign was recently launched to discredit the work of human rights non-governmental organizations, it being claimed that their work promotes the objectives of guerrilla groups. That has forced the Association of Relatives of Disappeared Detainees (ASFADDES) to close its offices in Urabá and Ocaña. The atmosphere of hostility and intimidation has reportedly endangered the non-governmental organizations' work. It was also alleged that soldiers and police officers accused of human rights violations by members of non-governmental organizations generally responded by accusing the latter - in criminal proceedings - of aiding and abetting the commission of terrorist acts.

144. Regarding article 10.1 of the Declaration, it was mentioned that the Government recently issued decree No. 221 of 31 January 1995, article 2 of which permits detained civilians to be transferred to military facilities in prison emergencies. Military facilities were alleged, de facto, to be beyond all judicial control. This provision, therefore, allegedly facilitates acts of enforced disappearance.

145. It was stated that article 38 (f) of law No. 137 of 1994 authorizes the detention on remand, without a warrant from the judicial authority, of persons suspected of participating in or planning crimes, in circumstances of extreme urgency. It was asserted that this provision weakens individual guarantees against deprivation of liberty and may facilitate the enforced disappearance of persons.

146. It was stated that the remedy of habeas corpus has been drastically weakened by law No. 15 of 5 October 1992, article 2 of which provides that such remedy is available only within the relevant judicial proceedings. This, it is maintained, has prevented its being used outside judicial proceedings or in cases of illegal or arbitrary deprivation of liberty by a non-judicial authority. This dilution of the remedy is said to explain why it was little used in 1994 and 1995.

147. Particular concern was expressed about the fact that General Alvaro Velandia Hurtado, who had been discharged on 6 July 1995 by the Office of the Attorney-General because of his involvement in the enforced disappearance and homicide of Nydia Erika Bautista de Arellana, was decorated on 4 August 1995 by the Minister of Defence with the Meritorious Service Order. Subsequently, the Government informed the Working Group that, following a presidential decree, General Velandia had indeed been discharged.

148. During the period under review, representatives of the Government of Colombia meet with the Working Group at its forty-fifth session, during which it assured the Group of its full cooperation and reiterated its invitation to visit the country. The Government also transmitted information about the legal steps taken in connection with approximately 100 outstanding cases in order to find those responsible for the disappearance. In none of them, however, had the investigations yet come to final conclusions. It also submitted replies on a number of other individual cases in which it reported that in two cases the subject's body had been found; in one case the person concerned was in detention and two cases were under investigation. In addition, the Government informed the Working Group of a bill establishing

mechanisms for compensation to victims of human rights violations in cases where a decision in this regard has been adopted by international human rights bodies. It also informed it about the establishment of a Commission which will study the follow-up to the recommendations included in the 1994 report on the visit to Colombia by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture.

149. The Government of Colombia also addressed an invitation to the Working Group to visit the country. The Working Group agreed to undertake this visit in the course of 1996.

Observations

150. The Group expresses its appreciation for the cooperation of the Government of Colombia during the period under review. However, the Group is concerned by the nature of developments in Colombia throughout 1995, and in particular by the fact that the evolving situation reflects a large number of cases of disappearance. The Group understands the difficulties being encountered in the prevailing context of violence and recognizes the progress made by the Colombian State, noting in particular the activities of the Ombudsman. Nevertheless, what is happening serves to underline the urgency of adopting more appropriate policies to enable the Colombian State to fulfil its obligation to "take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance" in accordance with article 3 of the Declaration.

151. The Group draws attention to the need for full compliance with the obligation that persons alleged to have perpetrated any such acts should be tried by the ordinary courts and not military courts, in accordance with article 16, paragraph 2, of the Declaration. Similarly, it emphasizes the need to ensure full and effective recourse to habeas corpus so as to give effect to the international obligation to guarantee "a prompt and effective judicial remedy" (art. 9) as a means of preventing disappearances and determining the whereabouts of persons deprived of their liberty. Lastly, it urges the Colombian authorities to do everything in their power to ensure the safety of family members and witnesses in accordance with article 13, paragraph 3, of the Declaration.

## Cyprus

152. As in the past, the Working Group continued to remain available to assist the Committee on Missing Persons in Cyprus (CMP). The Working Group noted that in 1995 the Committee, whose activities are based mainly on the testimony of witnesses and investigations in the field, held only two sessions of meetings at the end of the year, in November and December. Prior to the full resuming of the CMP activities, bilateral meetings between the Third Member and his Assistants, with both sides, took place on a regular basis to bridge existing differences.

153. The Working Group was informed that, throughout the year, the Secretary-General of the United Nations had followed carefully the activities of the CMP. In his reports, he conveyed to the Security Council, on several

occasions, his concern about the absence of progress in the work of the CMP, and that the continued support of the United Nations should depend on the cooperation of both sides in reversing this situation.

154. The Working Group welcomed the positive answer made by both sides to the letter of the Secretary-General of the United Nations addressed to the two leaders on 17 May 1995 urging them to finalize the submission of all the cases of missing persons as well as to accept his proposal of criteria for concluding the investigations carried out by the CMP.

155. After having received all the cases, the CMP had the initial task of classifying them in broad categories, including cases with known witnesses and those with none. At this stage, the only meaningful basis for assessing whether the CMP is making progress is the extent to which the Committee will complete its work on the cases at a reasonable speed.

156. The Secretary-General has asked the Third Member to submit, by the end of December 1995, a full report on the situation at that time; on the basis of this report, the Secretary-General will consider the question of continued support by the United Nations for the Committee.

## Dominican Republic

157. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of the Dominican Republic.

158. Of the two outstanding cases, one concerns a person who was arrested in June 1984 in Santo Domingo and who subsequently disappeared. The other concerns a university lecturer, who was also a journalist and political activist, and who was reportedly detained in May 1994 by members of the army and subsequently taken to a military base.

159. During 1995, the Government of the Dominican Republic submitted a reply concerning the case of the disappearance of the university lecturer, in which it was reported that all the necessary local investigations were being carried out in order to clear up this case. "By express order of the President of the Republic, the relatives of the missing person had been given every facility to visit police and military premises and hospitals. The Dominican Government was making serious efforts to find the missing person and the people of the country were offering their cooperation to ensure that this case is cleared up".

## Ecuador

160. During the period under review, the Working Group transmitted three newly reported cases of disappearance to the Government of Ecuador, all of which reportedly occurred in 1995 and were sent under the urgent action procedure. During the same period, it clarified four cases, in which two persons were presumed dead and two others were found in detention. The Working Group also retransmitted to the Government one case, updated with new information from the source.

161. During the same period, in accordance with Commission on Human Rights resolution 1995/75, the Working Group sent a "prompt intervention" cable to the Government requesting protection for members of human rights organizations and relatives of missing persons who had allegedly been subjected to acts of intimidation and harassment, and for a former National Police officer whose testimony had been of particular importance in the judicial investigation of the disappearance of two children, and who was alleged to have been subjected to intimidation and to have received threats from members of the National Police.

162. The majority of the 20 reported cases of disappearance occurred between 1985 and 1992 and concerned persons who were reportedly arrested by members of the Criminal Investigation Service of the National Police. The disappearances occurred in Quito, Guayaquil and Esmeraldas. In three cases the victims were children.

163. Two of the cases which concerned children were clarified this year when the source reported that they were presumed dead. The source further informed the Working Group that in November 1994, the Ecuadorian Supreme Court of Justice of Ecuador sentenced seven officers of the National Police, including a retired director and two active duty generals, to prison terms ranging between 2 and 16 years, for being implicated in the abduction, torture and murder of these children. The Supreme Court also ordered three officials to be put on trial for having hindered the investigation into these cases. In accordance with its methods of work, the Working Group transmitted these cases to the Special Rapporteur on extrajudicial, summary or arbitrary executions.

164. The three newly reported cases concerned Peruvian citizens who were reportedly detained in January and February 1995 in the cities of Huaquillas, Loja and Otavalo.

165. During the period under review, the Government of Ecuador submitted information on three individual cases in which it reported that in two of them, the persons were found in detention and were being held by the Ministry of National Defence on charges of spying; these cases were subsequently clarified. In the third case, the person was reported to have left the country; this case is still pending.

## Egypt

166. During the period under review, the Working Group transmitted seven newly reported cases of disappearance to the Government of Egypt, two of which reportedly occurred in 1992, one in 1993 and four in 1994.

167. The majority of the eight previously reported cases of disappearance in Egypt occurred between 1988 and 1993. Amongst the victims were an alleged supporter of the Jihad organization and three citizens of the Libyan Arab Jamahiriya. The renewal of the state of emergency during this period, which reportedly gave free rein to the security forces without supervision or accountability, is said to have been an aggravating factor in the disappearances.

168. The newly reported cases concern four students, one civil servant and two others whose professions are not known. In five cases the security forces are alleged to be responsible for the disappearance, and in two cases responsibility is imputed to the police. Five of the persons concerned reportedly disappeared in the Sohag Governate, one in Cairo and one in the Daquouliya Governate.

169. During the period under review, no information was received by the Working Group from the Government of Egypt concerning the outstanding cases. The Working Group is, therefore, unable to report on the fate and whereabouts of the persons concerned.

## El Salvador

170. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of El Salvador.

171. The majority of the 2,638 reported cases occurred between 1980 and 1983, in the context of the armed conflict between the Government of El Salvador and the Farabundo Martí National Liberation Front (FMLN). Many victims disappeared following arrest by uniformed soldiers, uniformed police or abduction in death-squad-style operations carried out by armed men in civilian clothing, reportedly linked to the army or to the security forces. Abductions by armed men in civilian clothing were, in some cases, subsequently recognized as detentions, which raised allegations of links with the security forces.

172. From 12 to 13 September 1995, one member of the Working Group, Mr. Diego García-Sayán, carried out a visit to El Salvador in order to undertake direct contacts with government authorities, the Ombudsperson, non-governmental organizations and members of the United Nations Observer Mission in El Salvador (ONUSAL), with regard to the process of clarification of the great number of outstanding cases.

173. During the period under review, information of a general nature concerning the obstacles to the application of the Declaration on the Protection of All Persons from Enforced Disappearance at the national level was submitted to the Working Group. Concern was expressed that several recommendations of the Truth Commission, mainly those which referred to the compensation of the relatives of the victims of human rights violations, have not yet been implemented. Concern was further expressed about the large number of cases pending before the Working Group which remain unclarified.

174. It was pointed out that a request to the Legislative Assembly, submitted in 1990, to establish a commission of inquiry into enforced disappearance in order to establish the truth regarding the events and responsibility for them, remains unanswered. Neither the National Counsel for the Defence of Human Rights nor any government agency has been entrusted to investigate the reported cases of enforced disappearance and to promote or monitor the implementation of the Declaration. It was also reported that the 1993 Amnesty Decree-Law has been applied in such a way that it has allowed those responsible for enforced disappearances to go unpunished.

175. The Working Group continued to receive allegations concerning the deficiencies of the criminal investigation system and the observance of the due process of law. Notwithstanding the express recommendations made by the Commission on Human Rights, the Human Rights Division of ONUSAL and the Truth Commission, the judicial system remains inefficient.

176. The failure to comply with some of the recommendations of the Joint Group for the Investigation of Illegal Armed Groups, set up pursuant to an initiative by the Secretary-General with the support of the Security Council, was also reported. The Joint Group recommended, among other things, special judges and prosecutors to deal with organized crime and illegal armed groups. The resurgence of such groups is said to be a product of non-compliance with some of these recommendations.

177. There have also been complaints concerning the difficulty of access by the Salvadoran population to the remedies of habeas corpus and amparo, fundamental instruments that guarantee the protection of human rights.

178. Lastly, some non-governmental organizations expressed concern at the failure of the Government of El Salvador to disseminate and promote the Declaration in accordance with paragraph 2 of General Assembly resolution 47/133 of 18 December 1992.

179. In 1995, no new information was received from the Government of El Salvador with regard to the outstanding cases. The Group is, therefore, still unable to report on the fate or whereabouts of the disappeared persons.

Observations

180. The Group notes that the matters covered by its mandate are evolving in a positive manner. It is encouraging to note that not a single case of enforced disappearance has been recorded since 1992 and that the human rights situation in general has tended to improve. However, it is concerned by the activities of organized crime and their possible implications for the enjoyment of human rights. Effective action to curb such activities, which could create a climate conducive to the perpetration of human rights violations, calls for the investigation of politically motivated illegal armed groups, in particular those concerning judges and special procedures.

181. The Group is also concerned by the fact that little has been done to clarify outstanding cases in accordance with the Salvadoran State's international obligation to have complaints investigated "thoroughly and impartially" (art. 13) "for as long as the fate of the victim of enforced disappearance remains unclarified" (art. 13, para. 6). The Group expresses the hope that suitable coordination between the Government of El Salvador, the government procurator's office for the protection of human rights and family members of disappeared persons will make progress in this direction possible as well as in connection with related compensation matters in accordance with article 19 of the Declaration.

## Equatorial Guinea

182. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Equatorial Guinea.

183. The three reported cases of disappearance concern members of political opposition parties who were reportedly arrested in Malabo on 9 and 10 August 1993. The police authorities, however, have reportedly refused to disclose any information on their whereabouts.

184. Although several reminders have been sent, no information has been received by the Working Group from the Government of Equatorial Guinea on the three outstanding cases. The Working Group is, therefore, still unable to report on the fate and whereabouts of the disappeared persons.

## Ethiopia

185. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Ethiopia. During this period, the Working Group considered clarified one case which occurred in 1994 and in which the Government reported that the person concerned had been released from detention. The Working Group also retransmitted one case, updated with new information from the source.

186. The majority of the 101 cases of disappearance reported to the Working Group occurred between 1991 and 1994 under the Transitional Government, and concerned members of the Oromo ethnic group suspected of participation in the Oromo Liberation Front who were arrested in Addis Ababa or disappeared from the military detention camp Hurso in western Ethiopia. Other cases concerned members of the Ogaden National Liberation Front (a political party) who disappeared in Region Five in eastern Ethiopia, also known as the Ogaden, an area reportedly inhabited by ethnic Somalis and in which there were reports of fighting by elements of the Ogaden National Liberation Front. Some 30 other cases occurred between 1974 and 1992 after the military Government took power, and concerned mainly, although not exclusively, high-ranking officials of Emperor Haile Selassie's Government and members of the Oromo ethnic group, in particular those believed to be involved with the Oromo Liberation Front, or persons accused of involvement with opposition political groups, including the Ethiopian Socialist Movement.

187. During the period under review, information of a general nature was received from non-governmental organizations. Serious concern was expressed to the Group about obstacles reportedly imposed by the Transitional Government of Ethiopia to the monitoring of human rights violations, including disappearances, in the country. It was reported that some local human rights organizations, especially those actively involved in receiving complaints, documenting abuses, and publishing their findings, have been denied formal registration, and hence their ability to operate has been restricted. It is further reported that when the denial to renew registrations was contested in court, members of the organization concerned were subjected to reprisals by the Government.

188. During the period under review, the Government of Ethiopia provided information on 55 individual cases of disappearance, in which it reported that in 39 of the cases "it is confirmed" that the subjects were not arrested in any part of the country and that "no evidence could be found indicating that" they "might have been disappeared". With regard to the remaining 16 cases, the Government reported that the subjects were not imprisoned at the Hurso military camp and that no evidence of their alleged disappearance can be found.

189. The Government also stated "that it had carried out an extensive inquiry in order to identify and clarify each and every case. However, due to the very complex nature of the accusations and especially the lack of ample evidence, no clear information could be obtained on the majority of accusations". It further stated, with regard to these cases, that a "deliberate and systematic system of misinformation" had been used for political purposes in order to discredit the Government. It expressed its disappointment that the submitting organization had made little effort to investigate the validity of its sources before transmitting the cases to the Working Group and said that the accusations were biased and partial.

190. The Government also informed the Working Group that the Constituent Assembly had adopted a new constitution which guaranteed fundamental human democratic rights, established the rule of law and provided for the establishment of a Human Rights Commission and the institution of Ombudsman.

Observations

191. The Working Group appreciates the cooperation received from the Government of Ethiopia. Nevertheless, it remains concerned that the efforts of the Government so far have not resulted in the clarification of the whereabouts of the persons reported as disappeared. The Working Group wishes to remind the Government of Ethiopia of its obligations under the Declaration to thoroughly investigate all allegations of disappearances and to bring the perpetrators to justice.

192. The Working Group further express its concern at the reported cases of reprisals by the Government against local human rights organizations and, in this connection, refers to article 13.3 of the Declaration which states that "steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigations, are protected against ill-treatment, intimidation or reprisal".

## Greece

193. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Greece.

194. The two outstanding cases were transmitted to the Government in 1993 and concern Albanian cousins who were reportedly taken by the police in Zagora the same year. The Government informed the Working Group in 1993 that the persons in question had never been arrested by the police, but that they were continuing investigations.

195. During the period under review, no new information was received from the Government of Greece with regard to these two cases. The Working Group is, therefore, still unable to report on the fate or whereabouts of the disappeared persons.

Guatemala

196. During the period under review, the Working Group transmitted to the Government of Guatemala, under the urgent action procedure, seven newly reported cases of disappearance, three of which occurred in 1994 and four in 1995. During the same period, the Working Group considered clarified six cases. It also retransmitted to the Government one case, updated with new information from the source.

197. In accordance with Commission on Human Rights resolution 1995/75, the Working Group sent a "prompt intervention" cable to the Government of Guatemala requesting protection for the prosecutor appointed to investigate the case of the disappearance of Efrain Bamaca, a leader of the armed opposition, for Mr. Bamaca's wife and for a former soldier who testified that he had seen Bamaca in custody at a military base, after the army reported his death in combat. Both the prosecutor and the former soldier had allegedly received continuing death threats. Mr. Bamaca's wife was reportedly confronted by approximately 40 people sent to the proposed exhumation site to intimidate her.

198. Concerned about the number of disappearances in Guatemala, the Working Group undertook a visit to that country in 1987. The observations included in the 1987 report on that mission (E/CN.4/1988/19/Add.1) referred in particular to the efforts that should be made to improve the functioning of the habeas corpus procedures, to protect the life of witnesses, as well as of persons and organizations reporting cases, and to adopt convincing measures to prevent and clarify disappearances.

199. It should be noted that, although the number of reported cases has declined notably since 1991, disappearances have become more selective in recent years and have mainly affected trade unionists, student leaders, journalists and human rights defenders.

200. The majority of the 3,151 reported cases of disappearance in Guatemala occurred between 1979 and 1986, in the context of the Government's fight against the Unidad Revolucionaria Nacional Guatemalteca (URNG). Their characteristics have been described in detail in the Group's previous reports.

201. The seven newly reported cases concern a leader of the indigenous rights group Council of Ethnic Communities Runujel Junam who was reportedly arrested in October 1994 in Guatemala City by members of the National Police; two members of the National Movement of Settlers (MONAP) who were reportedly detained in January 1995 by members of the Military Intelligence Service (G-2) in Guatemala City; two persons detained in November 1994 by members of the army in Jutiapa City and in the Municipality of San Luis, respectively; a pastor in the Presbyterian Church and member of the human rights organization Defensoría Maya reportedly detained in June 1995 in the Department of

Sacatepequez by members of the army, and a 22-month-old baby, nephew of the Guatemalan Nobel Peace Prize Laureate Rigoberta Menchú Tum, abducted in November 1995 in Guatemala City.

202. Five of these cases were subsequently considered clarified by the Working Group. The corpse of the pastor in the Presbyterian Church was found with signs of torture. The two members of the MONAP were found alive, and the person who disappeared in Jutiapa City was found in detention in the Military Zone No.10 headquarters in Jutiapa with signs of having been subjected to torture. The first and the fourth cases were subsequently transmitted by the Working Group to the Special Rapporteur on extrajudicial, summary or arbitrary executions and on the question of torture, respectively. With regard to the case of the nephew of Rigoberta Menchú, the child reappeared alive. One other case, which occurred in 1992, was also clarified when the source reported that the person concerned was currently free and living in the United States.

203. During the period under review, information of a general nature concerning obstacles to the application of the Declaration on the Protection of All Persons from Enforced Disappearance was received from non-governmental organizations. The phenomenon of impunity was considered as the most serious obstacle to the enjoyment of human rights in Guatemala. Several non-governmental organizations expressed concern that the majority of those responsible for violations of human rights have not been identified, prosecuted and punished by the State. The defective functioning of the administration of justice, of the Public Prosecutor's Office and of the security forces responsible for preventing and punishing crime was pointed out. Attention was drawn to the professional and technical shortcomings with regard to the conduct of criminal investigations. It was noted that the system for the administration of justice is simply not working. Some criminal court judges who have shown a willingness to investigate complex cases are said to have been transferred. In addition, the Public Prosecutor's Office reportedly does not have a policy governing criminal investigations, and there is said to be a lack of coordination between the Public Prosecutor's Office and the National Police.

204. Concern was expressed at the increase in political and social violence and the ineffectiveness of the State institutions responsible for investigating and punishing human rights violations, including enforced disappearances. Grave concern was also expressed about the many unsolved cases of enforced disappearance. It was reported that the work of the courts investigating cases of disappearance suffers from numerous flaws, such as delays in proceedings, failure to notify in writing the military authorities accused by the plaintiffs and failure to appear at the places indicated in the summons. There have been substantive judicial proceedings in only a few cases. In most of the cases, action and inquiries which could and should have been undertaken in a timely manner were not. The court's response reportedly continues to be excessively slow and is said to be hampered both by outside pressures on the Public Prosecutor's Office and the judiciary, and by the inherent failings of these bodies.

205. It was further reported that the competent authorities often do not conduct investigations, even when they know of the perpetration of enforced

disappearances, until a complaint is filed. In cases that are reported, they only take procedural steps which do not allow the investigation to progress and the guilty parties to be identified.

206. Complaints have been made about numerous cases of pressure and intimidation against officials of the judiciary and the Public Prosecutor's Office. It was alleged that the Government has not taken any steps to resolve this problem. More than 20 judges have reportedly complained to the Supreme Court about receiving death threats. It was also said that, since agents of the State are involved, prosecutors show undue reluctance to undertake an investigation for fear of possible reprisals. Military authorities have been denounced in the press for pressure brought against judges, prosecutors and policemen.

207. It was stated that fear of the army permeates the judicial system, rendering it dysfunctional in resolving disappearances. It was further reported that no measure has been adopted in order to compensate and assist the relatives of victims of enforced disappearance, in contravention of article 19 of the Declaration.

208. At its forty-sixth session, representatives of the Government of Guatemala met with the Working Group and it provided information on 39 individual cases of disappearance. Three cases were considered clarified on the basis of the information provided by the Government in which it stated that the persons concerned had been released and were living at liberty in their homes. Five cases, in which the Government reported that three persons were found dead and two others had been released and were living at liberty at their homes, will be considered clarified if the source does not contest information within a period of six months. The information provided on 31 cases was considered by the Working Group insufficient to constitute a clarification.

209. The Government of Guatemala also informed the Working Group of the action it had taken to implement the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance. The Government reported that, on 22 July 1995, Congressional Decree No. 48-95, which contains two amendments to the Penal Code, entered into force. According to the amendments, anyone who commits the crime of enforced disappearance shall be sentenced to 25 to 30 years in prison. The death penalty shall be imposed in lieu of the maximum prison sentence when, because of or as a result of the enforced disappearance, the victim is seriously or critically injured, experiences permanent mental or psychological trauma or dies. The crime is considered to continue as long as the victim has not been released. The Government stated that the reform of the Penal Code is a part of its commitment against impunity contained in the Comprehensive Agreement on Human Rights signed with the URNG on 29 March 1994.

210. The Government further stated that notices of presumed disappearances are piling up as a result of regrettable past actions, many of which occurred under the cover of the internal armed confrontation that had torn the country apart for more than three decades. The Government is most interested in establishing the truth of allegations regarding acts characterized as enforced or involuntary disappearances and shares the anguish of the relatives. In order to deal with this problem, it is making the greatest efforts to

determine the victims' whereabouts through coordinated action by the competent bodies and will provide the Working Group with the necessary information.

Observations

211. The Group wishes to express its appreciation for the cooperation of the Government of Guatemala. Although the context of violence and impunity continues to be of concern to the Group and the international community in general, it is worth noting that the number of enforced disappearances has declined. It is also noteworthy that the offence of enforced disappearance was defined in connection with the reform of the Penal Code in July. Nevertheless, there is still a need to adopt more effective measures to prevent and terminate acts of enforced disappearance, in accordance with article 3 of the Declaration.

212. Impunity is a factor that contributes to enforced disappearances and violations of human rights in general. Efforts to put an end to such impunity are an obvious priority in the light of Guatemala's international obligations, compliance with which requires "a prompt and effective judicial remedy" (art. 9 of the Declaration) and competent and independent State authorities that carry out investigations "thoroughly and impartially" (art. 13, para.1), and for this reason it is vital that "steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal" (art. 13, para. 3).

Guinea

213. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Guinea.

214. The majority of the 28 reported cases in Guinea occurred in 1984 and 1985 in the context of a coup d'état. It may be noted that the Working Group has received no reports of disappearances occurring in Guinea after 1985.

215. During the period under review, no new information was received from the Government of Guinea with respect to the outstanding cases. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared persons.

Haiti

216. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Haiti.

217. The majority of the forty-eight reported cases of disappearance occurred in three waves during the periods 1981-1985, 1986-1990 and 1991-1993. Most of the cases which occurred during the first period concerned members or supporters of the Haitian Christian Democrat Party who were allegedly arrested by members of the armed forces or by the Tonton Macoutes. The cases that occurred during the second period concerned persons who were reportedly arrested by armed men in civilian clothes, members of the Anti-Gang and

Investigation Service, and by the police. The last wave of cases took place in the aftermath of the coup d'état which ousted elected President Aristide.

218. During the period under review, the Government of Haiti informed the Working Group that it had taken all necessary measures to ensure that fundamental human rights were respected in Haiti. To that end, a National Commission on Truth and Justice had been set up and given the task of elucidating all crimes committed in Haiti during the last three years. In addition, the Government reported that it had taken a number of practical steps to ensure the protection of human rights, including, inter alia, the dismissal of section chiefs guilty of abuses, the discharge from the Haitian Armed Forces of all military personnel who had committed human rights violations and the establishment of a new police force, under the supervision of the Ministry of Justice, with special attention accorded to human rights in the training of this force. It also reported that a reform of the judiciary was under way.

## Honduras

219. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Honduras. The Working Group clarified one case in which it was reported that the disappeared person's remains were found and exhumed. This was the first person to be identified among those who disappeared in the early 1980s. The Working Group also retransmitted one case to the Government, updated with new information from the source.

220. In accordance with Commission on Human Rights resolution 1995/75, the Working Group sent a "prompt intervention" cable to the Government of Honduras requesting protection for members of the Office of the National Commissioner for the Protection of Human Rights, of the Committee of Relatives of Disappeared Persons in Honduras (COFADEH), of the Human Rights Committee of Honduras (CODEH), for journalists of the Honduran daily newspaper Tiempo and for relatives of a retired army major who was killed after having accused a former high official of the armed forces of acts of corruption. These persons had allegedly been subjected to acts of intimidation and harassment.

221. The majority of the 196 cases of disappearance reported to the Working Group occurred between 1981 and 1984, a period during which members of battalion 3-16 of the armed forces and heavily armed plain-clothes men seized people perceived as ideological enemies in their homes or on the street, and took them to clandestine detention centres. The systematic practice of disappearance ended in 1984, although sporadic cases continued to occur. The last cases reported to the Working Group occurred in September 1994 in the department of Colón.

222. During the period under review, information of a general nature concerning the obstacles to the application of the Declaration on the Protection of All Persons from Enforced Disappearance at the national level was received from non-governmental organizations.

223. According to the reports received, the practice of enforced or involuntary disappearance was systematic and general in Honduras during the 1980s, especially from 1982 to 1984. The reports state that for years the authorities took no action to clear up these cases and prosecute those responsible. However, the preliminary report prepared by the National Commissioner for the Protection of Human Rights, and published on 29 December 1993, establishes the responsibility of the military and civilian officials for the clandestine, systematic and organized disappearance of 184 persons suspected of having links with armed opposition groups during the 1980s.

224. It has been reported that a major step forward in the struggle to clarifying past disappearances has been taken in recent months, following the exhumation in December 1994 of the remains of Nelson Mackay, a lawyer who disappeared in 1982. The opening of investigations into his case caused a stir in Honduras because several of those allegedly responsible for ordering or carrying out disappearances in the 1980s still occupy senior positions in the military hierarchy and in the civilian administration and can apparently still evade accountability. As a consequence, little progress has been made to bring those responsible for Nelson Mackay's disappearance to justice. It was also reported that those allegedly responsible may be resorting to further human rights violations to obstruct the process. The Attorney-General's Office revealed it had sought protection for witnesses involved in the investigation.

225. It was reported that several members of the Office of the National Commissioner for the Protection of Human Rights, of COFADEH and of CODEH have received death threats and have been the object of surveillance by unidentified men. Leaflets mocking the Human Rights Commissioner and the relatives of the missing persons have recently appeared in the streets of the capital, Tegucigalpa. They have also been accused, in leaflets distributed by the self-proclaimed Democratic Constitutional Civic Committee, of orchestrating the exhumation of Mackay for financial gain and payment from a foreign Government. Sectors of the press and journalists of Tiempo have also received death threats in relation to their coverage of recent moves to investigate disappearances. The killing in suspicious circumstances of a retired army major has also been perceived as an attempt to prevent information regarding military abuses from coming to light. The retired army major's relatives have also been intimidated so as to stall the investigation into the killing.

226. The following legal obstacles to the investigations into disappearances have been pointed out. It has been argued that the disappearances under investigation are covered by the amnesty laws passed in 1986 and 1991. It was said, however, that the Honduran amnesty law of 1991 explicitly recognizes the State's international human rights obligations. Judicial proceedings initiated in 1984 against certain military officials accused of involvement in 27 cases of disappearance, which resulted in the acquittal of those accused, have also been cited as a barrier to reopening investigations against these officials, in accordance with the principle of law that no one can be tried twice for the same offence. Crimes committed before 1985 are covered under Honduran law by a statute of limitations, as a result of which investigations cannot be initiated after 10 years have elapsed. However,

article 325 of the Honduran Constitution states that there is no statute of limitations in cases relating to criminal actions and omissions and for political motives which result in the death of one or more persons.

227. It was said that the fact that judicial investigations have not yet been initiated and that official responsibility has not yet been established have impeded the setting up of mechanisms to grant fair and adequate redress, including reparation or financial compensation to the relatives of the victims of enforced disappearances, in accordance with article 19 of the Declaration.

228. Lastly, it was reported that applications for the remedy of habeas corpus have not been dealt with as promptly as required by the Constitution and unfailingly have produced no results whatsoever.

229. During the period under review, the Government of Honduras provided replies to the Working Group's questionnaire, sent last year, on the action taken to implement the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance at the national level and on the obstacles that had been encountered. The Government indicated that the responsibility of the judiciary in respect for and monitoring of human rights is a constant and fundamental function with a view to effective administration of justice. The courts provide a framework for their activities recognizing the guarantees contained in the Constitution of the Republic, including habeas corpus and amparo. The current system of administration of justice has also initiated the practice of conducting exhumations in recently discovered clandestine graveyards.

230. The Government also indicated that, to challenge the lawfulness of a detention, a person who has been arrested on the warrant of a competent authority can attach an application for reconsideration and subsidiary appeal to the notification of the detention or committal order, once the preliminary investigations period has ended. His or her legal counsel can also do so. In all other cases, an illegal detention can be ended by an application for the remedy of habeas corpus, which can be lodged by anyone, without any need for formal power of attorney, orally or in writing, using any means of communication, on working or non-working days and free of cost. However, the Government stated that an obstacle to its actual effectiveness is that, in Honduras, no judges are on duty at weekends and on public holidays. The law also provides that officials who order and agents who execute the concealment of a detainee or who, in any other way, violate this guarantee shall be guilty of the offence of illegal detention.

231. The Government further reported that there is not a single official up-to-date register containing all the information concerning the number of persons detained throughout the country. However, such information is available in the police stations, in the criminal courts and in the prisons, but it is not centralized at the national level. The courts remit the information to the respective appeal courts, the police stations to the corresponding police headquarters and the jails and prisons to the Directorate-General of Prisons.

232. Lastly, the Government reported that the duties of each judge include the obligation to visit the prisons within his or her jurisdiction periodically,

conduct a roll-call and check that prisoners awaiting trial are actually being held, and that those who have been granted their freedom are no longer being held.

233. At its forty-seventh session, the Working Group met with a representative of the Government of Honduras who informed the Group of the activities of the Executive, the National Congress and the Supreme Court of Justice during 1995.

Observations

234. The Group wishes to express its appreciation for the cooperation of the Government of Honduras. The Group welcomes the steps taken by the Government's Commissioner for Human Rights to investigate the practice of enforced disappearances in Honduras. It is also following with interest the action taken to have alleged perpetrators of enforced disappearances and other human rights violations tried by the ordinary courts. The pursuit of investigations as well as the judicial proceedings under way involving the trial of members of the armed forces can constitute positive steps in compliance with Honduras' international obligation to conduct investigations "thoroughly and impartially" (art. 13, para. 1, of the Declaration) and to bring to justice persons presumed responsible for an act of enforced disappearance (art. 14) before the ordinary courts (art. 16, para. 2). In this context, special attention should be paid to the international obligation to take steps to protect all those involved in the investigation against ill-treatment or reprisal (art. 13, para. 3).

India

235. During the period under review, the Working Group transmitted 10 newly reported cases of disappearance to the Government of India, 5 of which occurred in 1995 and were sent under the urgent action procedure. During the same period, the Working Group clarified 3 cases in which it was reported that the persons concerned had been released, and retransmitted to the Government 4 cases updated with new information from the source. The Working Group also eliminated 2 cases from its file owing to duplication and corrected the statistics.

236. The majority of the 232 cases of disappearance transmitted to the Government in the past occurred between 1983 and 1994 in the context of ethnic and religious disturbances in the Punjab and Kashmir regions. The disappearances in both regions were primarily attributable to the police authorities, the army and paramilitary groups acting in conjunction with, or with the acquiescence of, the armed forces. In Jammu and Kashmir numerous persons are said to have disappeared after "shoot-outs" with security forces. The disappearances were alleged to have been the result of a number of factors related to the wide powers granted to the security forces under emergency legislation, in particular the Terrorist and Disruptive Activities Act (TADA) and the Public Safety Act. In addition to allowing preventive detention, these laws reportedly allowed prolonged detention without the many other safeguards available under the criminal law. The victims have included shopkeepers, a lawyer who was reportedly well known for defending Sikhs detained in the Punjab, journalists, students and others.

237. All of the newly reported cases occurred in the province of Punjab. A father and his daughter were reportedly arrested by the police with a view to forcing the daughter's husband, whom the police were looking for, to surrender. The mother of the chief general of the Khalistan Commando Force (KCF) was reportedly arrested and taken to an unknown place. The Secretary-General of the human rights wing of the Akali Dal political party was reported to have disappeared following his arrest by police. The human rights wing of the Akali Dal is said to have filed a petition in the High Court alleging that several hundred "unclaimed" bodies had been cremated and alleging that many of these were individuals who had disappeared following their arrest by Punjab police and whose fate was unknown. The other cases concerned a shopkeeper, a pilgrim and other members of the Sikh community suspected by the Indian security forces of secessionist activities.

238. During the period under review, the Working Group received information from non-governmental organizations on the situation of human rights, primarily in Punjab and Jammu and Kashmir. With respect to Jammu and Kashmir, it was reported that the army, the Central Reserve Police Force and paramilitary Border Security Forces operate together and are implicated in human rights violations. Reportedly, under the TADA, these forces can detain anyone on the pretext of "public interest". It was reported that the detainees are not brought before any judicial authority to record their arrest and define the charges against them, as the domestic law and article 10, paragraph 1, of the Declaration on the Protection of All Persons from Enforced Disappearance require. The detainees, therefore, may remain in detention for excessive periods of time (sometimes months), without any information being given to their families on their whereabouts, in violation of article 10, paragraph 2, of the Declaration. It was reported that among the persons who have disappeared are individuals believed to be members or sympathizers of armed opposition groups, or relatives of such persons. It was alleged that these persons have disappeared or been killed in police custody, often after having been subjected to torture. Officials reportedly link their deaths or disappearances to clashes between militants and the police or to attempts to escape. Several lawyers are reported to have been arrested and illegally held by police in the past.

239. It was further alleged that orders issued by the High Court of the Jammu and Kashmir to produce suspects before it have been repeatedly ignored by government officials. This situation is said to facilitate disappearances. A judge of the Court has reportedly commented that "even this court has been made helpless by the so-called law-enforcing agencies. Nobody bothers to obey orders of this court ... ." In the majority of cases the officials are said to act with impunity, although in some rare cases the Government is said to have taken measures against security forces accused of human rights violations. However, no information on the identity of these persons nor the offences for which they were charged has reportedly been made public by the Government. In this connection, the Working Group would remind the Government of its responsibility under article 14 of the Declaration to bring the perpetrators of disappearances to justice. Legal proceedings with regard to cases of disappearances that are brought before the courts in Punjab are said to be extremely slow. It is also reported that the Punjab police fail to

comply with the orders of the courts and, further, are said to act outside their operational district, without prior consultation or the permission of the authorities concerned.

240. It was further reported that the security forces intimidate family members of disappeared persons who seek redress from the judiciary in order to investigate the fate of their missing relatives. They are allegedly harassed and, in violation of article 13 of the Declaration, in some cases even detained in order to prevent them from filing their complaints. Consequently, family members fearing reprisals are said to refrain from reporting the disappearance of their relatives.

241. During the period under review, the Government of India provided replies on 70 individual cases as well as to the allegations concerning the implementation of the Declaration, which the Working Group had received from non-governmental organizations.

242. With regard to the individual cases, the Government reported that in one case the person concerned had been arrested and produced in court (he was subsequently released); in two cases, the Government stated that the cases had been forwarded to the competent authorities for consideration. In respect of 31 cases, the Government stated that the persons had neither been arrested nor wanted by the authorities; in six cases the persons concerned had been killed in an encounter with the police; in one case, the person had died in an exchange of fire; in one other case the person had escaped from police custody, jumped into a river and drowned; two persons had committed suicide while in police custody; one other person had escaped and was found dead; two persons had escaped from the police; two other persons were in detention; one person had been released; one person had been produced in court and convicted; the address of another person was given: six cases were under investigation and in 12 others there was no information.

243. With regard to the information of a general nature submitted to the Government, the Government of India stated, inter alia, that respect for human rights was enshrined in the Indian Constitution whose provisions capture the essence of the Universal Declaration of Human Rights and the two International Covenants. The existence of a constitutionally established independent judiciary, the multi-party democratic system, a free vibrant press and a host of non-governmental organizations together constitute a powerful legal framework and watchdog mechanism for the protection of civil liberties and human rights. A National Human Rights Commission had been established under the protection of the Human Rights Act with the objective of protecting and promoting human rights in their widest form in the country. Several other States had also set up their own statutory human rights commissions. The system of parliamentary democracy provided for peaceful articulation and resolution of diverse viewpoints. In such a system there could be no justification for political dissent to be expressed by violence. The use of violence in a deliberate and organized manner as well as the defence of the use of violence by certain organizations could only be categorized as terrorism and as support for practices violating human rights and undermining the rule of law, democracy and a secular society.

244. With respect to Jammu and Kashmir, the Government stated, inter alia, that the State of Jammu and Kashmir has been faced with an unprecedented situation of militancy, aided and abetted from across the border, since 1989. With the introduction of foreign mercenaries in large numbers with sophisticated arms and ammunition, explosives, communication equipment and materials for perpetrating acts of terrorism, the situation has assumed the proportions of a proxy war. Terrorists trained and armed across the border have unleashed on the innocent people of the State a reign of terror including subversion of democratic institutions, stifling of press and media, intimidation of the legal system and liquidation of people opposed to the ideology of militant groups. Since 1990, 5,417 innocent people (including 73 political leaders and workers, 6 members of the judiciary, 9 members of the media, 254 government officials) have been mercilessly massacred by the terrorists. The security forces themselves have suffered heavy casualties including 1,109 deaths and four times that number of injured/permanently incapacitated persons. An effective system exists under the legal Constitution whereby a person, whether he belongs to the police or the security forces, alleged to have committed any excess or crime is brought "to book with utmost expedition". The Government further stated that there is no provision which guarantees any form of impunity to the law enforcement and security forces against prosecution or disciplinary proceedings for any excesses, misbehaviour or human rights violations. Since 1990, 261 security force personnel have been implicated for various acts of commission and omission. The punishments meted out ranged from departmental action to rigorous imprisonment for 12 years. Consequently, the Government of India regards the imposition of discipline on security forces and police personnel as a matter of vital importance for maintaining the "professional rectitude of its security forces". Details were given on action taken against members of the security forces for alleged abuses.

245. With regard to the allegation that persons arrested under substantive laws are not produced before judicial magistrates and are kept in unlawful detention without any information being given about their whereabouts, the Government stated that such allegations are false and contradicted by facts. In all cases of arrest, persons are produced before magistrates within the period specified under law. Even in the exceptional cases of arrest in remote areas, security forces are under strict instructions to provide information and follow the procedure laid down by law. In case of preventive detention under the Public Safety Act, the detainees are required to be provided with the grounds of detention within five days of detention, and then their cases are required to be placed before an Advisory Board under the Act within four weeks of detention. The Government further reported that TADA had been allowed to lapse on 24 May 1995. These legal requirements are met in all cases of detention.

246. The Government stated that the allegation that government officials have ignored the orders of the Jammu and Kashmir High Court is baseless. The allegation that security forces intimidate the family members of the disappeared person who seek redress by the judiciary, is totally baseless, biased and contradicted by facts. The large number of habeas corpus petitions filed and disposed of by the State High Court indicate that these observations do not reflect the true picture. Had the family members been threatened or intimidated by the security forces as alleged, these persons would not in the

first place have come forward to file petitions in the High Court. During the period 1990 to 1994, as many as 6,689 habeas corpus petitions were filed in the High Court. State government responded to 99 per cent of such petitions despite the tremendous strain under which the whole legal and administrative system is having to function.

247. The observation that Punjab police have adopted the practice of acting outside their operational jurisdiction without prior permission or consultation of the authorities concerned is incorrect. "Following leads of investigation within the territory of the Union of India is well within the ambit of law and it is wrong to infer that there were any human rights abuses including cases of alleged abduction of suspects from areas outside Punjab. If and when any suspects were located and picked up, concerned local police and judicial authorities were kept in the picture."

248. Finally, the Government stated that "it remains the Government of India's policy to cooperate fully with the Working Group on Enforced or Involuntary Disappearances. All cases of alleged disappearances which are brought to the attention of the police authorities are investigated. It is, however, an inescapable fact that a number of allegations of disappearances have been made concerning persons who have actually been exfiltrated across the border for training in subversion. These can in no circumstances be considered cases of disappearances and no investigation can be undertaken when cases are not registered with the concerned authorities".

249. At its forty-seventh session, the Working Group met with representatives of the Government of India who reiterated the Government's position with regard to the allegations of a general nature which had been transmitted to it. In connection with the Working Group's request to visit India, the representatives stated that "the Government of India is committed to extending its full cooperation to the Working Group. Facts clearly indicate that the number of allegations have come down drastically over the last three years. This pattern, therefore, stands established over a period of time and cannot be ignored. Given the fact that the allegations of disappearances have drastically fallen in the last three years, coupled with the Government of India's commitment to investigate the old cases, it is the view of the Government of India that the suggestion of the Working Group regarding a visit to India in 1996 is deemed inappropriate and unnecessary".

Observations

250. The Working Group wishes to express its appreciation to the Government of India for the replies which it submitted to the Group on individual cases, and for sending representatives to meet with it at its forty-seventh session.

251. Nevertheless, the Working Group remains concerned at the fact that it continues to receive allegations of disappearances in India. In this respect, it reminds the Government of its obligation to prevent, terminate and punish all acts of enforced disappearance. While the Working Group welcomes the fact that the Terrorist and Disruptive Activities Act (TADA) was allowed to lapse on 24 May 1995, it expresses its concern at the fact that, under the Public Safety Act, detainees may be held in preventive detention for four weeks without any remedy except to be placed before an Advisory Board. This

contradicts the right, under article 10, paragraph 1, of the Declaration, of any person deprived of liberty to be brought before a judicial authority promptly after detention.

## Indonesia

252. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Indonesia. During this same period, the Working Group clarified two cases on the basis of information previously submitted by the Government in which it was reported that the persons concerned had been released from detention, and on which no observations had been received from the source within the period of six months.

253. The majority of the 418 cases of reported disappearance in Indonesia occurred in 1991 and were related to the incident at the Santa Cruz cemetery in Dili, East Timor, where, on 12 November 1991, security forces opened fire on peaceful mourners during a memorial service for two youths who had been killed in a clash with the police. It is alleged that over 200 persons were killed and that about the same number of people disappeared on or shortly after 12 November 1991. Several other cases of disappearance were also reported to have occurred in East Timor in 1992, following the subject's arrest by members of the armed forces.

254. During the period under review, the Working Group received no information from the Government concerning these cases. The Group is, therefore, still unable to report on the fate or whereabouts of the disappeared persons.

### Observations

255. The Working Group remains concerned at the large number of cases of disappearance which remain pending on its books, and wishes to remind the Government of Indonesia of its obligation under the Declaration to thoroughly investigate all reported cases of disappearance and to bring the perpetrators to justice.

## Iran (Islamic Republic of)

256. During the period under review, the Working Group transmitted one newly reported case of disappearance to the Government of the Islamic Republic of Iran which reportedly occurred in 1995 and was sent under the urgent action procedure. It also retransmitted to the Government one case, updated with new information from the source.

257. The majority of the 509 cases of reported disappearance occurred between 1981 and 1989. Some of the missing persons were reportedly arrested and imprisoned for their alleged membership in armed opposition groups.

258. The newly reported case concerns an Iranian student of biochemistry and son of a Grand Ayatollah, who was reportedly arrested in July 1995 when members of Iranian security forces raided his house in the city of Qom.

According to the information received, the arrest took place some weeks after his father wrote an open letter to the President of the Republic in which he criticized the human rights practices of the Government.

259. During the period under review, the Government submitted information on a number of individual cases, in which it reported that in the case of an Australian architect, who disappeared in November 1993, an intensive search operation had been launched by the Ministry of the Interior, the judicial system and the police to locate the missing person and that the case was kept on the agenda of several government departments and agencies. In one case which had occurred in 1982 in Mashhad, the Government reported that the person had been arrested in 1982 on drug charges, sentenced to and served three years' imprisonment and was subsequently released. In another two cases the Government stated that it did not have enough information to pursue the matter further and requested further information. With regard to 16 cases, the Government stated that either there was no record of subject arrests or that the information submitted by the Working Group was insufficient to carry out further investigations. The Government provided information on 15 cases of disappearance, in which it stated that nine persons were judicially executed after being found guilty of supporting terrorist activities, membership in a terrorist group and/or violating the national security; two persons had been pardoned and released; two persons had been killed during street armed clashes and two other persons had disappeared during a subversive operation.

260. The Government also provided the Working Group with its comments and observations on the report submitted by the Working Group to the fifty-first session of the Commission on Human Rights (E/CN.4/1995/36, paras, 231-236). The Government stated that "the Ministry of Justice, in accordance with its official mandate, collects any information about any reported case of disappearance and immediately transmits to the relatives any relevant available information. The relatives of the missing persons should form a legal dossier at the Supervisory Office of the Justice Administration and its branches across the country. According to the Criminal and Civil Codes, any claimant has the legal right to be represented by a lawyer or defence counsel of his/her own choice.

261. As regards the list of disappeared persons, the Government stated that "efforts have been made to trace their fate and whereabouts. However, in most cases the information provided by the sources was not sufficient to allow a comprehensive search. As a minimum, the father's name, date and place of birth, and the address or telephone number of the next of kin were absolutely necessary in order to enable the tracing process to proceed. As noted in the Working Group's last report, most of the alleged disappearances were dated between 1981 and 1988, a period during which Iran was dragged into an imposed war with Iraq and, as a result, a large number of Iranian citizens have since been missing".

262. The Government further reported that "other incidents which may be related to the alleged disappearances include numerous terrorist activities by the Group called M.K.O. In a number of terrorist operations, the remains of the bodies of those engaged were destroyed beyond identification. In addition, members of this group often cross the border illegally to join their

headquarters in Iraq without the knowledge of their relatives. In 1988, an offensive operation was launched by this group which resulted in heavy casualties for its members. The Government stated that there seems to exist a strong likelihood that the names included in the list of the Working Group could be related to these incidents".

263. Finally, the Government reiterated "its desire for full-fledged cooperation with the Working Group aimed at the clarification of the alleged cases of disappearance through exchange of all necessary and relevant information and on the base of mutual confidence and understanding". This was underlined by a delegation of 12 representatives of the Government who met with the Working Group during its forty-seventh session.

Observations

264. The Working Group welcomes the cooperation of the Government of Iran. While it understands certain difficulties faced by the Government in tracing disappeared persons, it reminds the Government that all the cases transmitted to it by the Working Group appear to have the required elements established in its methods of work, and stresses the obligation of the Government under the Declaration to prevent, terminate and punish all acts of enforced disappearance.

265. The Working Group wishes to point out that not even one of the cases transmitted to it have been clarified on the basis of information submitted by the Government. The Working Group, in this connection, emphasizes the obligation of the Government of the Islamic Republic of Iran, under articles 13 and 14 of the Declaration, to thoroughly investigate all reported cases of disappearance and to bring the perpetrators to justice.

266. In cases in which the Government has informed the Working Group that the disappeared person has been judicially executed, the Government is requested to submit copies of the relevant judgements and death certificates, as is required in all such cases dealt with by the Working Group.

## Iraq

267. During the period under review, the Working Group transmitted a total of 226 newly reported cases of disappearance to the Government of Iraq.

268. The great majority of the 16,131 cases of disappearance reported to have occurred in Iraq concern members of the Kurdish ethnic group who allegedly disappeared in 1988. A significant number of other cases concern ethnic Arabs of the Shi'a faith who are reported to have disappeared in the late 1970s and early 1980s in the course of the expulsion of their families to the Islamic Republic of Iran on the allegation that they were of "Persian ancestry".

269. Most of the cases transmitted in 1995 are said to have occurred between 1980 and 1982 and concerned Kurds of the Shi'a faith, in the same circumstances as described above.

270. During the course of 1995, information of a general nature was received by the Working Group from non-governmental organizations. Profound concern

was expressed to the Group over the large number of disappearances in Iraq which remain unresolved. It is said that the Government has failed to assume its responsibility to try to determine the fate and whereabouts of the disappeared persons and to bring to justice the perpetrators of those crimes, who are said to operate with total impunity. It is further alleged that due to the lawlessness and arbitrariness of the political system in Iraq, as well as the total lack of any reliable judicial system in the country, there is no recourse through domestic remedies available to the families and, moreover, that the families fear reprisal if they dare to make inquiries with the authorities about their disappeared relatives. Indeed, as the Special Rapporteur on the human rights situation in Iraq stated in his last report to the Commission on Human Rights (E/CN.4/1995/56, paras. 65-66), "the structure of power in Iraq is such that human rights violations are inevitable, since guarantees for protection are absent and the scope for abuse of power is enormous. Power is grossly abused on daily and widespread basis ... and there can be no doubt as to the State of Iraq's responsibility for the systematic violation of human rights in Iraq".

271. During the period under review, the Government of Iraq provided information on 17 individual cases in which it reported that in 15 cases the persons concerned were currently residing in Iraq, and in two cases the persons had left the country. In response to a request from the Working Group, the Government of Iraq submitted the addresses of 13 of these individuals. However, the Government has not replied to the Working Group's request for a visit.

Observations

272. The Working Group wishes to note that Iraq remains the country with the highest number of disappearances on its files. This is a situation of extreme concern to the Group, especially in view of the reported climate of a total lack of any reliable judicial system, of total impunity and of continuing intimidation and reprisals.

273. The Working Group stresses the obligation of the Government of Iraq under the Declaration to prevent, terminate and punish all acts of enforced disappearance. In this connection, the Group particularly refers to article 9, paragraph 1, of the Declaration which states "The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their libeity and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances ..."; article 13, paragraph 1, which states "Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority ..."; and article 13, paragraph 3, which states "Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal".

274. Furthermore, these allegations constitute violations of article 10 of the Declaration which states, inter alia, that "accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members" and article 16 according to which persons alleged to have committed [acts of enforced disappearance] shall be suspended from any official duties during the investigation".

## Israel

275. During the period under review, the Working Group transmitted one newly reported case of disappearance to the Government of Israel and considered clarified one case in which it was reported that the body of the person concerned, a Palestinian living in the West Bank who was believed to have been detained by the Israeli security forces, had been found.

276. The one other case transmitted in the past reportedly occurred in 1992 in Jerusalem and concerns a man who allegedly did not return home from work. He is believed to be detained in a prison in Tel Aviv.

277. The case transmitted in 1995 concerns a Palestinian who was reportedly arrested in 1971 on the day a bomb had exploded in Gaza. Although he was allegedly seen in detention, his whereabouts have remained unknown ever since.

278. During the period under review, no information was received from the Government of Israel with respect to either of these cases. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared persons.

## Kazakhstan

279. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Kazakhstan.

280. The two outstanding cases of disappearance which reportedly occurred in 1994 concerned persons of Uzbek nationality who were allegedly members of the Uzbek political party "Erk". They are said to have been living as refugees in Kazakhstan and were reportedly abducted from their home in Almaly by six officers, allegedly working for the Uzbekistan Ministry of the Interior. It was believed that their abduction might have been connected to their activities for a newspaper, reportedly produced outside Uzbekistan and distributed clandestinely inside the country.

281. In accordance with the Working Group's methods of work, these cases were transmitted to the Government of Kazakhstan, the country where the abductions allegedly occurred, and a copy of the cases was sent to the Government of Uzbekistan, since its forces were implicated in the abduction.

282. During the period under review, no information was received by the Working Group from the Government of Kazakhstan with regard to these cases. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared persons.

## Kuwait

283. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Kuwait. The Working Group retransmitted the one outstanding case to the Government, updated with new information from the source.

284. The one case of disappearance in Kuwait pending before the Working Group was submitted in 1993 by a relative of the victim and concerns a "bedoun" of Palestinian origin with a Jordanian passport, who was reported to have disappeared in 1991 in the aftermath of the occupation of Kuwait by Iraqi forces.

285. During the period under review, no new information was received from the Government of Kuwait with regard to the outstanding case. The Working Group is, therefore, still unable to report on the fate or whereabouts of the disappeared person.

## Lao People's Democratic Republic

286. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of the Lao People's Democratic Republic.

287. The one outstanding case, which reportedly occurred in 1993, concerns the leader of the repatriation groups returning to the Lao People's Democratic Republic who reportedly left his residence with an official from the Department of the Interior to go to the Department of the Interior to discuss the future home for the returning repatriation groups. Since then his whereabouts have remained unknown.

288. During the period under review, the Government of the Lao People's Democratic Republic provided information on the one outstanding case of disappearance, in which it reported that a thorough investigation of the circumstances and an interrogation of the persons reportedly connected to the disappearance of the subject had not yet revealed the exact reasons for his disappearance. Extensive details by the Government were given on the investigation which the Government had carried out. However, the whereabouts of the person concerned remain unknown.

## Lebanon

289. During the period under review, the Working Group transmitted 30 cases to the Government of Lebanon, the majority of which reportedly occurred between 1982 and 1983.

290. The majority of the 279 cases of disappearances reported to the Working Group in the past occurred in 1982 and 1983 in the context of the Lebanese civil war. Those responsible for the disappearances are said to have belonged to the Phalangist Militia, the Lebanese Army or its security forces; in some cases, the Israeli Army was also reportedly involved in the arrest, together with one of the other forces mentioned above. Most of the detentions occurred in Beirut and its suburbs. Certain reports indicated that the arrests were

made by armed men in civilian clothes operating from vehicles. In a number of cases, the missing person was reportedly arrested and taken away from the Sabra and Chatila camps in September 1982. In some cases which reportedly occurred in 1984, 1985 and 1987, the arrested persons were foreign nationals who were abducted in Beirut. In some of these cases, religious groups such as the "Islamic Holy War" later claimed responsibility for the abductions.

291. Most of the cases submitted to the Working Group in 1995 also occurred in the context of the Lebanese civil war, as described in the above paragraph. In a few cases, the missing persons were reportedly transferred to and detained in the Syrian Arab Republic. Several disappearances allegedly took place at Lebanese Army check-points on the east/west border of Beirut. In one case, the disappearance reportedly occurred at a check-point controlled by the Syrian Army. Another case which occurred in 1985 concerns that of a merchant who was allegedly abducted from his car while travelling from Tripoli to his residence in the mountains, an area which was at that time under Syrian control. It is believed that the missing person was later detained in Damascus. A more recent case, which took place in 1992, concerns a member of the political bureau of the Phalangist party, who was allegedly abducted in front of his home, said to be in an area under the control of Syrian troops, by a group of armed men in civilian clothes.

292. During the period under review, the Working Group received information from the Government of Lebanon, in which it stated inter alia, that

> "... from 1975 to 1990, Lebanon's situation was such that the State was not able to exercise full control over national territory. In these circumstances, numerous transgressions and breaches of human rights occurred, not least the disappearance of several persons on Lebanese territory. The successive investigations carried out by the competent authorities have, unfortunately, been fruitless.
>
> "Thanks to the Taif Agreement of 1989 and to the ensuing national recovery, the State had regained legal and military jurisdiction over its territory, with the exception of the Israeli-occupied region of South Lebanon. The Israeli occupation of South Lebanon made it physically impossible for the Lebanese State to conduct investigations in this region, where there was a strong possibility that some of the persons in question might be found. Similarly, the liberation of Lebanese nationals abducted and detained in Israeli prisons and in the Israeli-controlled Khiam detention camp could shed light on the fate of numerous persons currently presumed missing.
>
> "It followed that, for the above-mentioned reasons, the enforced or involuntary disappearance of a number of persons on Lebanese soil could not be ascribed to the Lebanese State."

Observations

293. The Working Group wishes again to remind the Government of Lebanon of its continuing responsibility to undertake all requested investigations, until the fate of the missing persons is fully elucidated. In this respect, it has

emphasized the applicability of article 7 of the Declaration to the particular circumstances which affected Lebanon at the time of the above disappearances.

Libyan Arab Jamahiriya

294. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of the Libyan Arab Jamahiriya. The one outstanding case, transmitted last year, concerns a Sudanese translator at the International Centre of Research of the Green Book in Tripoli, who reportedly disappeared in 1993.

295. To date, no response has been received from the Government of the Libyan Arab Jamahiriya concerning this case. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared person.

Mauritania

296. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Mauritania.

297. The one outstanding case reportedly occurred in 1990 and concerned a 21-year-old man who is said to have been taken by members of the National Guard in a village in southern Mauritania during a nightly curfew. Reportedly, at that time, many people belonging to the Hal-Pulaar ethnic group in the south of the country were subjected to human rights violations, allegedly carried out by government forces and the Haratine militia.

298. During the period under review, no new information was received from the Government of Mauritania with regard to the outstanding case. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared persons.

Mexico

299. During the period under review, the Working Group transmitted 23 newly reported cases of disappearance to the Government of Mexico, 21 of which occurred in 1995. All of the cases were sent under the urgent action procedure. During the same period, it clarified 20 cases. The Working Group also retransmitted to the Government 10 cases, updated with new information from the sources.

300. The majority of the 314 reported cases of disappearance in Mexico occurred between 1974 and 1981. Ninety-eight of these cases took place in the context of the rural guerrilla warfare which was waged in the mountains and villages of the State of Guerrero during the 1970s and the beginning of the 1980s.

301. Most of the newly reported cases occurred in February 1995 in the States of Chiapas and Veracruz; 19 of these persons were members of several Indian, peasant and political organizations, such as the Emiliano Zapata Peasant Organization (OCEZ), the Independent Union of Rural and Peasant Workers (CIOAC), the Mexican Workers, Peasants and Students Coalition (COCEI), the Indian People's National Coordinating Committee, the Emiliano Zapata Oriental

Democratic Front and the Democratic Revolution Party (PRD); seven of these persons were members of the indigenous ethnic groups Nahua, Tojolabal and Zapoteca. Most of the arrests and detentions were carried out by members of the State Judicial Police of Veracruz, the army and the State Judicial Police of Oaxaca. Armed civilians reportedly participated in the detention of three persons. The four other cases concerned four members of a family who were reportedly detained in February 1995 in the city of Orizaba, State of Veracruz, by members of the Municipal Police of Orizaba and taken to a detention centre belonging to the Judicial Police, after being accused of being in contact with the Zapatista National Liberation Army (EZLN).

302. During its forty-fifth and forty-sixth sessions, the Working Group met with representatives of the Mexican National Commission for Human Rights, who gave an account of the activities of its Special Programme on Alleged Disappearances and provided extensive information on 31 cases of disappearance. Seven cases were subsequently considered clarified by the Working Group; in four cases the subject had been released, in one case the person concerned was found in prison, in one other case the subject had been found alive, and in another case the Working Group was provided with a certified copy of a judicial resolution on the subject's presumed death. On the other 10 cases, the Working Group decided that they will be considered clarified if the sources do not contest information within a period of six months. The information provided on the other 14 cases was considered by the Working Group, in accordance with its methods of work, as insufficient to constitute a clarification.

303. In the course of 1995, the Working Group also considered clarified eight cases on the basis of information provided by the Government and the Mexican National Commission for Human Rights during 1994.

304. During the period under review, the Government of Mexico sent to the Working Group a response to its "prompt intervention" cable of 27 September 1994 concerning reports of alleged acts of intimidation, harassment and reprisals against members of the Comité de Familiares de Desaparecidos Comité Eureka, the Brother Francisco Victoria Human Rights Centre and the Independent National Committee for the Defence of Prisoners, Persecuted and Missing Persons and Political Exiles (CNI). The Government reported that the authorities allegedly responsible had denied any involvement in the matter. The Mexican National Commission for Human Rights subsequently sent an official communication to the non-governmental organizations, requiring them to provide stronger evidence in support of their complaints, so that the proper course to be followed in that respect could be determined.

Observations

305. The Group wishes to express its appreciation for the cooperation of the Government of Mexico and for the positive results achieved by the National Commission for Human Rights in its investigations, which have had the effect of clarifying a large number of cases.

306. The Group takes note of the fruitful work relationship established with the Mexican State through the National Commission for Human Rights. However, it regrets the absence of any marked change in the trend reflecting the number

of cases of enforced disappearance, and for this reason considers it is vital that the Mexican State should take "effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance", as stated in article 3 of the Declaration on the Protection of All Persons from Enforced Disappearance.

307. Moreover, the Group would point out that, in accordance with the provisions of the Declaration, the conduct of investigations "thoroughly and impartially" (art. 13) into outstanding cases will remain the Mexican State's international obligation "for as long as the fate of the victim of enforced disappearance remains unclarified" (art. 13, para. 6). Lastly, it urges that more effective action should be taken to protect persons and organizations involved in the investigation of acts of enforced disappearance against intimidation or reprisal, in accordance with article 13, paragraph 3, of the Declaration.

## Morocco

308. During the period under review, the Working Group transmitted two cases to the Government of Morocco, one of which reportedly occurred in 1976 and one in 1981. During the same period, the Working Group clarified 50 cases. It also deleted one case from its files due to duplication and corrected the statistics.

309. The majority of the 232 cases of disappearance transmitted to the Government were reported to have occurred between 1972 and 1980 and during the 1980s. Most of them concerned persons of Western Saharan origin who were reported to have disappeared in territories under the control of the Moroccan forces, because they or their relatives were known or suspected supporters of the Polisario Front. Students and better educated Sahraouis were reported to have been particularly targeted. In some instances, disappearances allegedly followed the mass arrest of persons after demonstrations or before visits of prominent persons or officials from other countries.

310. Disappeared persons were reported to have been confined in secret detention centres, such as Laayoune, Qal'at M'gouna, Agdz and Tazmamart. Cells in some police stations or military barracks, and secret villas in the Rabat suburbs, were also allegedly used to hide the disappeared. Despite the release in 1991 of a large group of prisoners, several hundred other Western Saharans are said to remain unaccounted for, and their families are reportedly still pursuing their inquiries with the Moroccan authorities and detention centres.

311. The two new cases transmitted in 1995 by the Working Group to the Government of Morocco concern a person of Saharan origin who was allegedly abducted in 1976 as he was trying to escape shelling by the Moroccan Air Force and go to the camp for refugees of Saharan origin and a student who was reportedly abducted by the security forces in Casablanca in 1981 on the day when the Democratic Confederation of Labour launched a general strike reportedly generating disturbances and many arrests.

312. During the period under review, the Government of Morocco forwarded to the Working Group information concerning 64 individual cases of disappearance.

It provided in particular the current address of 47 disappeared persons and indicated that 15 other missing persons had died since they disappeared. Two other cases concerned persons who were currently being detained in Agadir and in Kenitra.

313. The Government of Morocco further stated that there had been no disappeared persons of Saharan origin detained in Tazmamart. The allegations of disappearance of hundreds of persons of Saharan origin were made by groups hostile to Morocco. In addition, the Government of Morocco stated that contrary to what was said in the Working Group's last report the act leading to an enforced disappearance was a crime and Moroccan law contained various provisions against enforced disappearances, e.g. articles 224 to 228 and articles 436 to 440 of the Moroccan Penal Code.

314. The Government further reiterated its willingness to provide the Working Group with all information deemed necessary to identify the missing persons on the Group's books. The Government also provided an extract of a death certificate in relation to one case and a copy of a declaration whereby the current place of residence of a former missing person was confirmed. It also transmitted to the Working Group the address of relatives of two deceased missing persons, specifying that one family in particular had benefited from various forms of assistance through the intervention of the Ministry of Human Rights.

315. During an exchange of views with the Working Group at its forty-sixth session, representatives of the Government of Morocco reiterated its willingness to make every possible effort to elucidate the fate of the persons still considered as disappeared by their families or by international organizations dealing with their cases. Investigations were under way on all the outstanding cases of disappearance. However, the Government of Morocco faced certain constraints owing to the fact that the majority of the cases were very old and that the transcription of names did not always provide the complete data regarding the family antecedents of the missing person.

316. The Government of Morocco reaffirmed its willingness to put an end to the problem of disappearances in its country and to rehabilitate and compensate the former disappeared persons and their families. It also stated its commitment to avoid the repetition of acts of disappearance, in accordance with the relevant provisions of the Moroccan Penal Code, and to punish those who engage in disappearances in any way.

Observations

317. The Working Group wishes to express its appreciation to the Government for sending representatives to the Working Group's forty-sixth session and for its efforts to clarify the outstanding cases of disappearances. It wishes to remind the Government, however, that under article 4 of the Declaration the very act of enforced disappearance as such shall be made an offence under criminal law punishable by appropriate penalties.

318. Furthermore, under articles 13.6 and 19 of the Declaration, investigations must continue even in very old cases "for as long as the fate

of the victim of enforced disappearance remains unclarified" and in such cases the families "shall have the right to adequate compensation, including the means for as complete rehabilitation as possible".

Mozambique

319. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Mozambique.

320. The one outstanding case reportedly occurred in November 1974 and concerned the President of the Mozambique Revolutionary Committee, who was said to have been arrested in 1974 in a hotel in Blantyre, Malawi, and to have been taken first to Mozambique and then to the southern part of the United Republic of Tanzania. It was believed that he was then transferred to Niassa province, Mozambique.

321. Although a number of reminders have been sent, no information has ever been received by the Working Group from the Government of Mozambique with regard to this case. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared person.

Nepal

322. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Nepal.

323. Four of the five outstanding cases of disappearance reported to the Working Group occurred in 1985 and concern four men who reportedly disappeared from police custody in 1985. In late 1984, a series of nation-wide political protests started in Nepal. In June 1985, following bomb explosions in Kathmandu and other cities, numerous persons were reportedly arrested and some of them were allegedly held in incommunicado detention for several months. The one other case of reported disappearance pending on the Working Group's books is said to have occurred in 1993 and concerns a student who allegedly disappeared in Kathmandu.

324. During the period under review, no new information was received from the Government of Nepal with regard to the outstanding cases. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared person.

Nicaragua

325. During the period under review, the Working Group transmitted two newly reported cases of disappearance to the Government of Nicaragua, both of which reportedly occurred in 1994 and one of which was sent under the urgent action procedure.

326. Of the 234 cases reported to the Working Group, 131 have been clarified. Most of these cases occurred between 1979 and 1983, in the context of the internal armed conflict which took place during the decade of the 1980s. Many

of the reports of these disappearances pointed to the involvement of members of the army, the former Sandinist police, the former General Directorate for the Security of the State and the Frontier Guard.

327. Of the newly reported cases, one concerns a farmer who was allegedly detained in October 1994 on his way to La Montañita sector, between the Matagalpa-Jinotega and the Panamerican Highway, by a group reportedly composed of members of the army and the National Police. The other newly reported case concerns a resident of Santa Rosa, in the jurisdiction of the municipality of Waslala, Department of Matagalpa, who was reportedly arrested in July 1994 by members of the army and taken to a military unit after being accused of being a member of the Recontras armed groups.

328. During the period under review, no information was received by the Working Group from the Government of Nicaragua concerning the 103 outstanding cases. The Working Group is, therefore, unable to report on the fate and whereabouts of the persons concerned.

Observations

329. While the Working Group can understand the difficulties encountered by the Nicaraguan authorities, it cannot but regret the lack of communication from the Government which would enable it to know whether or not any steps have been taken by the authorities to investigate the outstanding cases of disappearance. The Working Group wishes to remind the Government of Nicaragua of its international obligation, under article 13, paragraphs 1 and 6, of the Declaration, to conduct a "thorough and impartial investigation" for "as long as the fate of the victim of enforced disappearance remains unclarified".

## Pakistan*

330. During the period under review, the Working Group transmitted 32 newly reported cases of disappearance to the Government of Pakistan, 31 of which reportedly occurred in 1995 and 1 in December 1994. All the cases were sent under the urgent action procedure.

331. The majority of the 21 cases of disappearance previously reported to the Working Group were alleged to have occurred in 1986 and between 1989 and 1991, and concerned persons of Afghan nationality with refugee status in Pakistan. Most of the persons concerned were said to be affiliated with the Harakate Ingilaba Islami Afghanistan party. The abductions reportedly took place in Peshawar, North-West Frontier Province, by persons belonging to a rival party, the Hezb-e-Islami Afghanistan, which was alleged to be acting with the acquiescence of the Pakistani authorities.

332. Most of the newly reported cases concerned the disappearance of members or sympathizers of the political party Muhajir Qaomi Movement (MQM), who were allegedly arrested by the police or security forces during May and June 1995.

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* Mr. Agha Hilaly did not participate in the decisions relating to this subsection of the report.

The majority of the disappearances occurred in Karachi. One other case concerned an Afghan refugee living in Peshawar who was allegedly abducted in front of his home by plain-clothes men said to be connected to the Afghan Hezb-e-Islami party of Hekmatyar.

333. During the period under review, information of a general nature was received from non-governmental organizations. It was said that in violation of article 6 of the Declaration on the Protection of All Persons from Enforced Disappearance, the police, the paramilitary group Rangers and other law enforcement agencies conduct "clean-up" operations, which consist in the arbitrary arrest or abduction of members of the MQM and their subsequent disappearance. It was further reported that in compliance with provisions of domestic law and article 10 of the Declaration, family members have filed petitions with the High Courts of Lahore and Karachi, requesting that their relatives be brought before a judicial authority. However, it is reported that such persons were never produced before the courts or any judicial body, nor was any information provided to the relatives about the whereabouts of these detained persons, in violation of article 10, paragraph 2, of the Declaration. It was said that the perpetrators of these disappearances act with impunity, and that the Government has reportedly taken no action against such persons, in spite of its responsibility under article 14 of the Declaration.

334. It was further reported that a number of Afghan political refugees living in Pakistan were abducted by Afghan authorities who allegedly acted with the acquiescence of the Government of Pakistan in violation of articles 3 and 5 of the Declaration.

335. During the period under review, the Government of Pakistan provided information on one case in which it reported that the person concerned had been picked up by Qasim Rangers for interrogation and released the same day. However, he has been missing ever since, and the Government stated that investigations have been initiated by the authorities to locate him.

Observations

336. The Working Group is deeply concerned at the sharp increase in reported cases of enforced disappearance which allegedly occurred in Pakistan in 1995. It wishes to remind the Government of its responsibility under the Declaration to prevent and terminate all acts of disappearance and to bring the perpetrators to justice.

337. In particular, the Working Group wishes to stress the obligation under article 10 of the Declaration to hold persons deprived of liberty only in an officially recognized place of detention, to maintain official up-to-date registers of all persons deprived of their liberty and to make accurate information on the detention of such persons promptly available to their family members and counsel.

Paraguay

338. During the period under review, new cases of disappearance were transmitted by the Working Group to the Government of Paraguay.

339. Of the 23 cases transmitted by the Working Group to the Government of Paraguay, 20 have been clarified. All of these cases occurred between 1975 and 1977 under the military Government. It should be noted that the Group has received no reports of disappearances occurring in Paraguay since 1977. Several of the disappeared persons were members of the Communist party, including one who was Secretary-General of the party. Although disappearances took place in the capital, Asunción, the majority of the cases affected the rural population and were carried out in the districts of San José, Santa Helena, Piribebuy, Santa Elena and Santa Rosa.

340. On 26 May and 23 August 1995, the Government of Paraguay informed the Working Group that the newly appointed Attorney-General had undertaken efforts to pursue the investigations into the whereabouts of the three persons whose cases remain outstanding.

Peru*

341. During the period under review, the Working Group transmitted three newly reported cases of disappearance to the Government of Peru, two of which were transmitted under the urgent action procedure; all three cases reportedly occurred in 1995. During the same period, the Working Group clarified three cases: one, on the basis of information previously provided by the Government on which no observations had been received from the source within a period of six months, one in which the source reported that the person had been extrajudicially executed, and one in which the person concerned informed the Working Group that he was currently living abroad. In accordance with its methods of work, the Working Group transmitted the last case to the Special Rapporteur on extrajudicial, summary or arbitrary executions. The Working Group also retransmitted to the Government five cases, updated with new information from the source.

342. During the period under review, the Chairman of the Working Group, together with the Special Rapporteurs of the Commission on Human Rights on the independence of the judiciary, extrajudicial, summary or arbitrary executions, and on torture addressed a joint appeal to the Government of Peru expressing concern at the promulgation by the Government, on 14 June 1995, of an amnesty law. The law provided for amnesty to military, police or civilians who, during the course of their official functions, were accused, investigated, tried or condemned for common crimes or abuses which occurred during the fight against terrorism since May 1980 up to the date of the promulgation of the law.

343. The Government of Peru, in a letter dated 21 August 1995, responded to the authors of the joint appeal. The Government noted that Peru was confronting a variety of serious problems including terrorism, drug trafficking, extreme poverty, degradation of the environment and urban violence; nevertheless, it remained firm in its commitment to the process of strengthening and expanding a democratic culture. The Government was trying to consolidate a process of pacification aimed at restoring security and hope

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* Mr. Diego García-Sayán did not participate in the decisions relating to this subsection of the report.

to the Peruvian people. The Amnesty Law was promulgated as part of this process. The Government also reported that the Congress was considering a bill to compensate relatives of victims of human rights violations. The Government gave additional details on the articles of the Constitution under which the law was passed, as well as the other measures taken in connection with the process of pacification.

344. The vast majority of the 2,879 cases of reported disappearances in Peru occurred between 1983 and 1992 in the context of the Government's fight against terrorism, especially Sendero Luminoso (Shining Path). In late 1982, the armed forces and police undertook a counterinsurgency campaign and the armed forces were granted a great deal of latitude in fighting Sendero Luminoso and in restoring public order. While the majority of reported disappearances took place in areas of the country which had been under a state of emergency and were under military control, in particular in the regions of Ayacucho, Huancavélica, San Martín and Apurímac, disappearances also took place in other parts of Peru. Detentions were reportedly frequently carried out openly by uniformed members of the armed forces, sometimes together with the Civil Defence Groups. Some 20 other cases reportedly occurred in 1993 in the Department of Ucayali and concerned largely the disappearance of peasants.

345. Out of concern for the situation of disappearances in Peru, two members of the Working Group, at the invitation of the Government visited Peru from 17 to 22 June 1985 and again from 3 to 10 October 1986, on the Group's behalf. Their reports are contained in documents E/CN.4/1986/18/Add.1 and E/CN.4/1987/15/Add.1.

346. All of the newly reported cases are said to have occurred in 1995, and concern a student in Lima who reportedly disappeared after being forced into a car by four armed men; the other two cases concern peasants who were reportedly detained by members of the armed forces in the Departments of Junin and San Martín, and subsequently disappeared.

347. The Working Group received abundant information from non-governmental organizations expressing serious concern about the Amnesty Law (see para. 342 above). The law had the immediate effect of freeing from prison those military officers convicted in the La Cantuta cases, a forced disappearance - later summary execution - in which the victims, nine university students and one professor, were eventually found to have been murdered by the military. Serious concern was expressed by non-governmental organizations that the Amnesty Law would also destroy any dissuasive value existent in the Penal Code, vis-à-vis future human rights violations.

348. To prevent any questioning by the judicial authorities of the Amnesty Law, on 28 June 1995, Congress passed yet another law, No. 26492, prohibiting the courts from reviewing it and obligating judges to grant the amnesty.

349. It has further been reported to the Working Group that even when there has been a will to investigate cases of disappearance by the judicial authorities, the lack of cooperation from the military combined with threats against attorneys and witnesses have made it impossible to pursue the case.

350. Non-governmental organizations have further expressed serious concern about the number of cases pending before the Working Group which remain unclarified. "Profound dismay" has been expressed that years after a person has been abducted, the investigation into his subsequent "disappearance" is closed without his fate having been established and without the perpetrators having been brought to justice.

351. During the course of 1995, the Government of Peru provided a number of replies on individual cases and information of a more general nature to the Working Group. With respect to individual cases, the Government reported, inter alia, that in 12 cases the persons concerned had been released; in 4 cases the persons concerned were in detention; in 3 cases the persons concerned had reappeared; in 3 other cases investigations into the disappearance were continuing; in 52 cases the persons concerned had not been detained or intervened against, and in 3 cases, following investigations, the whereabouts of the persons concerned could not be determined.

352. The Government also informed the Working Group about the promulgation of the National Council of Justice Organization Act. The Government was fully responsive to the need for an autonomous, independent and effective judiciary as the best safeguard of the constitutional State, and the promulgation of this Act was a demonstration of the political will of the Government of Peru to implement specific measures that would contribute to optimizing the administration of justice in the country. The National Council of Justice was an autonomous body independent of other constitutional bodies and its primary functions are the selection, appointment and confirmation or removal of all judges and prosecutors, with the sole exception of those elected by the people. As a safeguard of the independence of the National Council of Justice, neither the Executive nor the Legislature may take part in the election of its members.

353. During the period under review, the Government also provided information to the Working Group on the changes in anti-terrorist legislation. On 20 April 1994 the Executive promulgated Act No. 26447, approved by the Democratic Constituent Congress, which provides for the presence of a defence counsel from the beginning of police action, instead of only once the detainee had made a statement to the public prosecutor's department. It also reported that a minor under 18 years old is free from criminal liability, recalling the previous provisions which had lowered the minimum age for criminal liability to 15 years.

354. The Government of Peru also provided statistics on cases of disappearances alleged to have occurred during the first semester of 1995. It informed the Group that five cases had been reported so far in 1995; four were in the process of investigation and one had been resolved. Two of the cases reportedly occurred in Lima, one in Lambayeque, one in Junin and one in Huancavélica. The Government provided statistics on other violations of human rights reported during the first six months of 1995 in which is stated that there had been 50 complaints, of which 34 were under investigation and 16 had been archived. Further information was given with regard to previous years. In this connection it reported that of a total of 120 cases of reported disappearances, most had occurred in 1992 and 1993.

Observations

355. The Working Group wishes to express its appreciation to the Government of Peru for the extensive information which it has submitted to the Group during the period under review. The Group also wishes to note that the number of reported cases of disappearance in Peru has declined in comparison with previous years, which is a positive development.

356. Nevertheless, the Group wishes to express its deep concern at the Amnesty Law and the law of interpretation. Both laws are in contradiction to the Declaration, which establishes the obligation of States to prosecute the presumed perpetrators of acts of enforced disappearance (art. 17) before the ordinary tribunals (art. 16, para. 2). In enacting the above-mentioned laws, the State of Peru has failed to fulfil its international commitment that the perpetrators or presumed perpetrators of enforced disappearance should not benefit from an amnesty law (art. 18). The impunity which such laws create is conducive to the repetition of such acts as well as to other forms of human rights violations.

357. Furthermore, both the above-mentioned law of interpretation as well as the limited cooperation of certain authorities in the investigation undertaken by the judiciary affect the possibility to apply criminal penalties (art. 5). Limitations on the exercise of the right to habeas corpus also affect access to a prompt and effective judiciary (art. 9). Finally, threats and acts of reprisals against lawyers and witnesses not only make it difficult to carry out investigations, but are also in violation of article 13, paragraph 3, of the Declaration.

358. The Working Group calls upon the Peruvian authorities to take appropriate "legislative, administrative and judicial measures in order to prevent and terminate acts of enforced disappearance" (art. 3) and reminds the Government that in accordance with the provisions of the Declaration, the Government has an obligation to carry out thorough and impartial investigations (art. 13) for as long as the "fate of the victim of enforced disappearance remains unclarified" (art. 13, para. 6).

Philippines

359. During the period under review, the Working Group transmitted one newly reported case of disappearance to the Government of the Philippines which reportedly occurred in 1995 and which was sent under the urgent action procedure. During the same period, the Working Group clarified this case when the person concerned was reported to have been released. Two other cases were also clarified during this period on the basis of information previously submitted by the Government in which it was reported that the persons concerned were in detention, and on which no observations had been received from the source within a period of six months. The Working Group also deleted one case due to duplication, corrected the statistics and informed the Government.

360. The majority of the 648 reported cases of disappearance occurred in the late 1970s and early 1980s, virtually throughout the country, and took place within the context of the Government's anti-insurgency campaign.

361. During the period 1975 to 1980, the persons who disappeared were reportedly farmers, students, social workers, members of church groups, lawyers, journalists and economists, among others. The arrests were carried out by armed men belonging to an identified military organization or to a police unit such as the Philippine Constabulary, the Central Intelligence Unit, the military police, the Integrated National Police, and other organizations. In the following years, the reported cases of disappearance concerned young men living in rural and urban areas, described as members of legally constituted student, labour, religious, political or human rights organizations, which the military authorities have claimed are a front for the outlawed Communist Party of the Philippines (CPP) and its armed wing, the New People's Army (NPA). Among the groups most commonly targeted were said to be KADENA (Youth for Democracy and Nationalism) and the National Federation of Sugar Workers.

362. Despite the peace talks initiated by the Government with several opposition movements, disappearances have continued in the 1990s, mainly in the context of violations committed by NPA, the Moro National Liberation Front, the Mindanao Islamic Liberation Front, the Citizen Armed Forces Geographical Units and the Civilian Volunteer Organizations. The more recently reported cases have concerned, inter alia, a human rights worker and several persons suspected of being members of NPA.

363. Out of concern for the situation of disappearances in the Philippines, and at the invitation of the Government, two members of the Working Group visited the country from 27 August to 7 September 1990. A full report on their visit is contained in document E/CN.4/1991/20/Add.1.

364. The one case transmitted in 1995 concerned a human rights worker who was reportedly abducted at a bus-stop by four armed men in civilian clothing believed to be members of the military intelligence group of the Philippine Armed Forces.

365. During 1995, the Government of the Philippines provided information on over 100 cases. In one case it reported that the person concerned had been released, and the case was subsequently clarified. With regard to 95 cases, the Government stated that they had been consigned to the archives for lack of evidence or information or that the whereabouts of the persons still could not be determined. With regard to seven cases the person had died; in four cases they had been released and in another four cases the whereabouts of the person had been determined.

Observations

366. The Group expresses its appreciation to the Government of the Philippines for the information it submitted to it during the reporting period. Nevertheless, the Working Group wishes to remind the Government of its international obligation, under articles 13.1 and 13.6 of the Declaration, to conduct a "thorough and impartial investigation" for "as long as the fate of the victim of enforced disappearance remains unclarified", rather than consigning it to the archives for lack of evidence.

367. On the other hand, the Working Group urges the Filipino authorities to take all possible measures to ensure the protection of human rights organizations, families and witnesses, in accordance with article 13.6 of the Declaration.

## Rwanda

368. In the aftermath of President Habyarimana's death in a plane crash on 6 April 1994, Rwanda has been torn by an unprecedented human tragedy. Hundreds of thousands of civilians, including large numbers of women and children, have been killed or have disappeared, and hundreds of thousands are displaced within the country or have found refuge in other countries.

369. The human rights field officers deployed by the High Commissioner for Human Rights in support of the Special Rapporteur on the situation of human rights in Rwanda and the Commission of Experts established pursuant to Security Council resolution 935 (1994), have been instructed to receive pertinent information about disappearances and channel such reports to the Working Group. The dimension of the Rwandan tragedy, and the fact that the number of persons who have perished or were forced to leave their places of residence constitute about half of the entire population, make it difficult to distinguish between those who have been victims of massacres and those who have disappeared.

370. Within this context, reports of "disappearances" in post-genocide Rwanda have been rare. Several reasons may be cited. In some cases of alleged missing persons, unreliable prison records may render identification or location of those persons virtually impossible. Also, persons within the community, including family members of missing persons, may be reluctant to come forward and declare the possible abduction of one of their members, for fear of reprisals or harassment.

371. In some cases, the issue by the mayor of a mandat d'amener, especially on the charge of complicity in the genocide, may cause family members to take flight for fear of being implicated themselves. There are also those cases in which the human rights field operation in Rwanda has received reports, from NGOs or disinterested parties, of the arbitrary or illegal arrest of persons within the community, whilst the local population itself remained silent. This was attributed to the tacit complicity on the part of the community in the removal and execution of a known "génocidaire".

372. Of the eight reported cases of disappearance currently pending on the Working Group's files, five occurred in 1990 and 1991 in the north of the country, in the context of the ethnic conflict between Tutsis and Hutus. Three cases took place in 1993 in northern Rwanda and concerned students from the Seventh Day Adventist University in Mudende suspected of supporting the Rwandese Popular Front.

### Observations

373. While understanding the magnitude of the human rights tragedy in Rwanda, the Working Group urges the Government to take all measures necessary to create a climate in which enforced disappearances will not occur in the

future. In addition, it wishes to remind the Government of its obligation under article 13 of the Declaration to investigate all allegations of enforced disappearance and to take steps to ensure "that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal".

## Saudi Arabia

374. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Saudi Arabia.

375. The one outstanding case was transmitted in 1992 and concerns a Saudi Arabian businessman who was allegedly arrested in Amman in 1991 by Jordanian security forces, and was later reportedly handed over to the Saudi Arabian authorities. He is believed to be currently held at a secret location in Riyadh.

376. To date, no response has ever been received from the Government of Saudi Arabia concerning this case. The Working Group is, therefore, unable to report on the fate of the disappeared person.

## Seychelles

377. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Seychelles.

378. The three reported cases of disappearance allegedly occurred on the main island of Mahé in the years 1977 and 1984. All three persons were allegedly abducted shortly after they left their homes by persons believed to belong to the security forces. At least two of the persons were reportedly known opponents of the Government.

379. During the same period, no new information was received from the Government of Seychelles with regard to these cases. The Working Group is, therefore, still unable to report on the fate or whereabouts of the missing persons.

## South Africa

380. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of South Africa.

381. The majority of the 11 cases of disappearance reported to the Working Group occurred between 1976 and 1982 in Namibia. Since, at that time, Namibia was under South African jurisdiction, and the responsibility for the disappearance was imputed to agents of that country, in accordance with the Working Group's methods of work, the cases are retained on the South Africa country file. One other case, however, was reported to have occurred in late 1993, and concerned a young woman, reportedly a member of the African National Congress, who was found dead two weeks after her reported disappearance. The Working Group clarified this case in 1994.

382. During its forty-fifth session, the Working Group met with a representative of the Government of South Africa who expressed the desire of his Government to resolve the issue of the outstanding cases. He explained the difficulty for the South African authorities in pursuing matters since the disappearance occurred in Namibia and South Africa had no legal jurisdiction in that country. However, he assured the Working Group that the Government would do its utmost to resolve the matter.

Sri Lanka

383. During the period under review, the Working Group transmitted 40 newly reported cases of disappearance to the Government of Sri Lanka, 36 of which reportedly occurred in 1995 and were sent under the urgent action procedure. It also clarified three cases on the basis of information previously provided by the Government on which no observations had been received from the source within a period of six months. The Working Group, furthermore, deleted two cases from its files since they had no date of disappearance, corrected the statistics and informed the Government.

384. Since the establishment of the Working Group in 1980, 11,479 cases of disappearance alleged to have occurred in Sri Lanka have been reported to the Working Group. The cases occurred within the context of two major sources of conflict in that country: the confrontation of Tamil separatist militants and government forces in the north and north-east of the country and the confrontation between the People's Liberation Front (JVP) and government forces in the south. Cases reported to have occurred between 1987 and 1990 took place mostly in the Southern and Central Provinces of the country, during a period in which both security forces and JVP resorted to the use of extreme violence in the contest for State power. In July 1989, the conflict in the south took a particularly violent turn when the JVP adopted even more radical tactics, including enforced work stoppages, intimidation and assassination, as well as targeting the family members of the police and army. To thwart the JVP military offensive, the State launched a generalized counterinsurgency campaign and the armed forces and the police appear to have been given wide latitude of action to eliminate the rebel movement and restore law and order in any way they saw fit. By the end of 1989, the armed forces had put down the revolt, having succeeded in capturing and executing the nucleus of the JVP leadership.

385. Cases reported to have occurred since 11 June 1990, the date of resumption of hostilities with the Liberation Tigers of Tamil Eelam (LTTE), have taken place primarily in the Eastern and North-Eastern Provinces of the country. In the north-east, the persons most often reported detained and missing were young Tamil men accused or suspected of belonging to, collaborating with, aiding or sympathizing with LTTE. Tamil persons internally displaced owing to the conflict and staying in informal shelters such as church or school centres were the group particularly at risk of detention and disappearance. The most frequently utilized method of detention in the north-east was the cordon-and-search operation in which the army, often in conjunction with the police, and particularly the Special Task Force, went into a village or a rural area and detained scores of persons. Many were released within 24 to 48 hours, but a percentage of the persons remained in custody for questioning.

386. Out of concern at the situation of disappearances in Sri Lanka, and at the invitation of the Sri Lanka Government, the Working Group undertook two missions to that country from 7 to 18 October 1991 and from 5 to 15 October 1992. Members of the missions met with government officials, non-governmental organizations, relatives and friends of the disappeared persons. The reports of the Working Group are contained in documents E/CN.4/1992/18/Add.1 and E/CN.4/1993/25/Add.1.

387. The majority of the newly reported cases occurred in 1995 following the resumption of hostilities in mid-April 1995 and are said to have taken place mainly in the Batticaloa, Colombo and Trincomalee districts. The circumstances under which the reported arrests took place are said to conform to the pattern of disappearances in Sri Lanka in the past and most are said to have been carried out by the security forces. Four other cases reportedly occurred in 1994 in Batticaloa, Ploonnaruwa and Colombo.

388. During the course of 1995, information of a general nature was received by the Working Group from non-governmental organizations. Serious concern was expressed to the Group about the problem of impunity in Sri Lanka. It was reported that the Sri Lankan armed forces, in particular in the conflictive eastern part of the country, are accorded widespread discretionary powers to deal with the population, and are able to operate with total impunity. It is said that no member of the armed forces has ever been brought to justice for the thousands of cases of disappearance.

389. Non-governmental organizations also called for the remains of possible victims of disappearances to be identified in a scientific manner, in order to obtain the maximum amount of information available and thus better enable the identity of the victims to be established.

390. Another matter brought to the attention of the Group concerns the reported laxities in the implementation of the current Emergency Regulations, which are said to require an arresting officer to issue an "arrest receipt" and notify the Human Rights Task Force (HRTF), an independent body set up by the previous Government to monitor and safeguard the welfare of detainees, of the arrest "forthwith, and in [any] case no later than 48 hours". Presidential directives, on the other hand, are said to only require that the HRTF should be informed "as soon as possible and in any case within four days of such arrest". It is further reported that the same presidential directives require the "arrest receipts" to be issued only "upon request".

391. During the period under review, the Government of Sri Lanka replied to the allegations sent to it in 1994 and to the questionnaire sent by the Working Group on the implementation of the Declaration. It also sent a report published by the Ministry of Foreign Affairs on the human rights situation in Sri Lanka.

392. With regard to the allegations of a general nature and in reference to the Sooriyakanda mass graves, the Government stated that the latest excavation of the graves had been carried out on 14 September 1994 under the supervision of the High Court and resulted in the discovery of further skeletal remains. A team of experts from the forensic, investigative and legal fields assisted

the court in order to ensure a proper and scientific excavation and assist the further discovery and identification of bodies and the circumstances in which they were buried at Sooriyakanda.

393. With regard to the abduction of the schoolboys (the so-called Ambilipitiya abduction case), the Government reported that the Attorney-General had processed 81 charges against the former headmaster of the school and 8 soldiers in respect of the disappearance of 26 schoolchildren. The charges were abduction, abduction with the intention of causing death and for wrongful confinement.

394. The Government further reported on its decision to establish three commissions with a mandate to inquire into and report on cases of disappearances.

395. In response to the Working Group's questionnaire on the implementation of the Declaration, the Government stated that the Declaration had been made available to all institutions of the Government, and to the public. In order to implement the Declaration, three presidential commissions had been appointed by the President on 26 December 1994 to "probe complaints of involuntary disappearances". The Government further said that "all persons taken into custody under normal law have to be produced before a magistrate within 24 hours" and that "incommunicado detention is not provided for under the law of the country". The Government stated that the "Constitution of Sri Lanka contains provisions enabling an aggrieved party or his/her counsel to institute proceedings, to challenge the lawfulness of detention". In addition, "independent organizations like the International Committee of the Red Cross and the Human Rights Task Force are kept informed of arrests and places of detention". The Government also said that it maintains an official up-to-date register of all persons deprived of their liberty in every place of detention. With regard to safeguards to verify release after detention, the Government reported that persons are normally released after being produced in a court of law and the release of detainees is made to a friend/next of kin to further guarantee the actual release.

396. The report prepared by the Ministry of Foreign Affairs provided information on measures taken by the Government during 1994 to ensure the protection and promotion of human rights.

Observations

397. The Working Group remains concerned at the large number of past cases in Sri Lanka which remain pending, as well as at the increase in new cases reported to it this year. Notwithstanding the cooperation which the Working Group has received from the Government, it is alarmed at reports according to which the previous pattern of systematic disappearances seems to be re-emerging in Sri Lanka.

398. In particular, the Working Group stresses the obligation of the Government under article 7 of the Declaration which states that "no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency may be invoked to justify

enforced disappearances". Furthermore, according to article 13, paragraph 6, any investigation should be conducted "for as long as the fate of the victim of enforced disappearance remains unclarified".

399. Most important, however, is that the Government take effective legislative, administrative, judicial or other measures to prevent further acts of enforced disappearance in accordance with article 3 of the Declaration. For example, accurate information on the detention of such persons and their place of detention shall be made promptly available to their family members and an official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention, in accordance with article 10.

Sudan

400. During the period under review, the Working Group transmitted to the Government of the Sudan 254 newly reported cases of disappearances, 252 of which reportedly occurred in 1995; two of these cases were transmitted under the urgent action procedure. During the same period, the Working Group decided to clarify one case in which it was reported that the person concerned had been released from detention.

401. The six previously reported cases of disappearances submitted to the Working Group all occurred during the period since the current Government came to power in 1989, and have primarily involved former government officials.

402. Two hundred and forty-nine of the 254 newly reported cases concern villagers who were allegedly abducted from the village of Toror in the Nuba Mountains on 21 February 1995 by the armed forces of the Government of the Sudan. It is suspected that the villagers have been taken to one of the Government-controlled "peace camps" in Umdurien, Agab or Umserdieba, but their relatives have received no information concerning their whereabouts since their abduction. Most of the other cases concerned political opponents of the Government who have been arrested and are believed to have been placed in incommunicado detention in unknown locations.

403. During the period under review, the Working Group continued to receive allegations that the Government of the Sudan operates "ghosthouses" throughout the country where individuals are detained without warrant and held in incommunicado detention in violation of article 10 of the Declaration.

404. The Working Group also received reports that the Popular Defence Forces of the Government of the Sudan have abducted women and children in southern Sudan. These women and children are then reportedly taken to the north where they are compelled to work as slaves. It is alleged that this practice is particularly prevalent in western Bahr el Ghazal.

405. It has further been reported to the Working Group that in Khartoum and other cities in the north, security forces of the Government of the Sudan have abducted southern Sudanese children off the streets and have placed them in camps where they are given Arabic names, indoctrinated in Islam and forced to undergo military training. Although many of these children are orphans who

are homeless, others have families and are reportedly abducted from their homes. It is estimated that thousands of children have disappeared in this manner.

406. During the period under review, no information was received from the Government of the Sudan with regard to the outstanding cases. As regards the 250 cases transmitted by the Working Group at its forty-seventh session, in accordance with its methods of work, it should be understood that the Government could not have responded in the time available before adoption of the present report.

Observations

407. The highest number of alleged cases of disappearances reported to the Working Group to have occurred in 1995 was in the Sudan. The Working Group expresses particular concern at this considerable increase in 1995 and at the serious nature of the allegations. In particular, taking into account paragraph 23 of resolution 1995/38, the Working Group is alarmed at reports that many of the victims are children and members of ethnic minorities.

408. The Working Group strongly reminds the Government of the Sudan of its obligations under the Declaration to prevent and terminate all acts of disappearance and to bring the perpetrators to justice.

## Syrian Arab Republic

409. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Syria. Three cases were retransmitted to the Government, updated with new information from the source.

410. Of the total 35 cases of disappearance reported to the Working Group, 20 have been clarified. Among the 15 outstanding cases, a substantial number allegedly occurred throughout the country in the early to mid-1980s. Some of the persons concerned were allegedly members of terrorist groups; others were reportedly members of the military or civilians.

411. During the period under review, the Government of the Syrian Arab Republic provided information on six cases: in two cases, the persons concerned had been sentenced to death and executed, in one case the person was sentenced to life imprisonment and was in detention, in one case the person had died in detention and a death certificate was provided, and the two other persons were reported to have left the country.

## Tajikistan

412. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Tajikistan.

413. All of the six cases of disappearance reported to the Working Group were alleged to have occurred between late 1992 and July 1993 in the context of the escalating civil war when pro-Government forces took over the capital of Dushanbe.

414. Although a reminder was sent, no information has been received by the Working Group from the Government of Tajikistan. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared persons.

Thailand

415. During the period under review, no new cases of disappearances were transmitted by the Working Group to the Government of Thailand. At its forty-fifth session the Working Group decided to delete the two outstanding cases from its files since the source informed the Working Group that contact could no longer be established with the families, a prerequisite of the Working Group, and therefore no follow-up could be given to the cases. These cases involved two refugees from Myanmar who were allegedly arrested by the authorities on 22 May 1992 in the city of Ranong on suspicion of being illegal immigrants.

416. During the period under review, the Government of Thailand replied to a request from the Working Group for additional information on the two outstanding cases, stating that after time-consuming and exhaustive investigations carried out by both the police department and the provincial authorities of the Province of Ranong, the Ministry of the Interior of Thailand confirmed that there had been no arrests of Myanmar nationals with such names in Ranong on 22 May 1992.

417. The Government also submitted a reply to the Working Group's letter, sent in 1994, on the implementation of the Declaration. In its reply the Government stated that there was no specific law outlining measures to prevent acts of enforced disappearance as such. However, provisions of the Penal Code, which deal with offences against liberty of person, could be applied to cases of enforced disappearance. If public officials are found to be involved in such cases, a provision of the Penal Code that relates to penalties imposed on public officials for failing in their duties or dishonestly exercising their authority may be applied. Moreover, the Civil and Commercial Code provides for the exercising of victims' right to adequate compensation. The reply also provided information on (a) the time-frame within which persons deprived of their liberty must be brought before a judicial authority; (b) the detained person's right to challenge the lawfulness of his or her detention; (c) the duty of the Public Prosecutor and prison authorities to ensure protection of a detained person against illegal detention or detention contrary to the court ruling; and (d) officials who are authorized to issue an order to detain a person.

Togo

418. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Togo.

419. Six of the 10 outstanding cases concern persons who were reportedly detained in 1994 by members of the armed forces at Adetikope as they were on their way to Lomé to visit 2 relatives of the Secretary-General of the Togolese Drivers' Trade Union, who had reportedly been injured in a car accident. One other case concerned a civil servant who was reportedly the

adviser to the President of the High Council of the Republic between 1991 and 1993 and who is said to have been abducted from his car in the Lomé suburb of Aguényié and taken to an unknown destination by three men in a minibus, followed by a military vehicle.

420. The other victims were a man arrested by the police and taken to the Central Commissariat in Lomé, from where he disappeared a few days later; a farmer abducted from his home by armed men and taken to an unknown destination; and a businessman abducted from his home by five men in military fatigues.

421. During the period under review, the Government of Togo provided information on nine cases, in which it reported that the Ministries of Justice and Defence, as well as the General Directorate of the National Police, had been requested to undertake investigations to determine the whereabouts of the persons reported disappeared. Although they have still not been able to locate the persons concerned, the investigations into the disappearances were continuing.

422. The Government further stated that the disappearances had occurred during the period of democratic transition, which was marked by a general climate of insecurity. It reported that when the present Government took office in June 1994, it took measures to restore confidence and combat insecurity, as well as to strengthen the protection of human rights. It further reported that in order to encourage national reconciliation, the National Assembly adopted an amnesty law on 15 December 1994 which led to the freeing of all those arrested or prosecuted for offences of a political nature, and brought to an end all legal proceedings against those presumed responsible for offences of the same kind. The Government assured the Working Group of its continued willingness to cooperate with the Group.

Turkey

423. During the period under review, the Working Group transmitted 17 newly reported cases of disappearances to the Government of Turkey, of which nine reportedly occurred in 1995. All except three of the newly reported cases were transmitted under the urgent action procedure. During the same period, a total of 20 cases were clarified by the Working Group and four other cases were retransmitted to the Government.

424. On 4 April 1995, the Representative of the Secretary-General on internally displaced persons, the Chairman of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and the Chairman of the Working Group on Enforced or Involuntary Disappearances sent an urgent appeal to the Government, in which they requested the Turkish authorities to take all the necessary measures to ensure, in conformity with international human rights and humanitarian law, the rights, among others, to life and physical and mental integrity of Turkish and Iraqi civilians of Kurdish ethnic origin, after Turkish armed troops entered the territory of northern Iraq. By note verbale dated 6 April 1995, the Permanent Mission of Turkey to the United Nations Office at Geneva declared that "United Nations human rights mechanisms created under resolutions of recommendatory character should not

attempt to encroach upon the field of international humanitarian law". In response, on 10 May 1995, the signatories of the urgent appeal sent a new communication to the Government, stating the reasons why humanitarian law fell within the purview of their mandates. Another note verbale dated 16 June 1995, was received from the Government of Turkey, confirming its views as to the distinction between international human rights law and humanitarian law.

425. Of the total number of 132 reported cases of disappearance transmitted to the Government by the Working Group since 1990, the highest number of cases occurred in 1994. Despite the fact that there has been a decrease in the number of reported disappearances compared with 1994, enforced or involuntary disappearances continue to occur, particularly in the context of clashes between the Kurdish Workers' Party (PKK) guerrilla movement and government security forces. South-east Turkey, where a state of emergency exists, remains the most affected region. Some of the disappearances allegedly occurred during raids conducted by gendarmes accompanied, at times, by village guards, a civil defence corps reportedly armed and paid by the Government to fight the PKK guerrillas. In some cases, the persons were members of political opposition parties or journalists for newspapers opposed to the Government.

426. The majority of the 17 newly reported cases transmitted to the Government during the period under review concerns persons of Kurdish ethnic origin. Victims included several villagers suspected of supporting the PKK, Kurdish political leaders, a journalist, correspondent of the Ozgur Ulke, and a trade unionist. In one particular case the missing person was the son of a leading Kurdish intellectual. In most cases, the persons concerned had reportedly been detained during military raids on their villages, in the street while going to or coming from work, or in their own homes. The forces alleged to be responsible for the disappearances include security forces, police officers and members of the anti-terror branch of the police. In certain cases, despite the reported refusal of the authorities to confirm the subject's detention, witnesses were reported to have seen or heard the person in prison. In one case, in which the Government is said to have refused to confirm the subject's arrest, a picture appeared in a newspaper in Turkey showing him blindfolded and wounded. In accordance with the Group's methods of work, three of the cases were transmitted to the Special Rapporteur on extrajudicial, summary or arbitrary executions.

427. In addition to the individual cases of disappearance, the Working Group continued to receive information according to which violations of the most fundamental rights still occur in Turkey. Specific emphasis was made of the use of article 8 of the Anti-Terror Law to criminalize non-violent political opinion. It has been alleged that with the intention of fighting the PKK, harassment and attacks are being committed against those suspected of having links with the PKK and activists who fight for Kurdish self-determination. Serious concern was expressed that in the conflict between the Government and the PKK, civilians not directly involved in combat are becoming targets of human rights violations by both the Turkish security forces and the PKK guerrillas.

428. It has been further alleged that the existence of a state of emergency is a major obstacle to the implementation of the Declaration. The establishment of a state of emergency, currently in force in 10 provinces in south-east Turkey, has reportedly led to the excessive concentration of power in the hands of the authorities. Impunity is said to be another factor in the continuation of violations of human rights in Turkey. Reportedly, although members of the security forces are mentioned to be responsible for most enforced disappearances, they are said never to be brought to trial or prosecuted for these acts. Furthermore, it has been alleged that abuse of registration procedures, laid down in the Turkish Code of Criminal Procedure, for the prompt and appropriate registration of detainees and notification to their families are disregarded in the south-eastern provinces.

429. During the period under review, the Government of Turkey provided a number of replies on individual cases, and information of a more general nature. By letter dated 20 December 1994, the Government provided information about measures taken to implement the Declaration. By letter dated 29 March 1995, the Government provided comments regarding the Group's previous report to the Commission on Human Rights. According to the Government, Turkey was highlighted as the country with the highest number of disappearances in 1994 on the basis of allegations received from sources, but no comment on the credibility of the sources was made. The Turkish Government considers that this situation gives rise to a distorted view and leads to unfair conclusions. In addition, the Government stated that all the necessary procedures to ensure respect for the personal liberty and integrity of detainees, including proper registration and prompt notification, are in place. The Government further referred to the terrorist campaign against Turkey waged by the PKK. In addition, by letter dated 3 November 1995, information was provided regarding the amendments brought by the Turkish Grand National Assembly to article 8 of the Anti-Terror Law.

430. The Government of Turkey furthermore provided information on terrorism, including a non-exhaustive compilation of the attacks perpetrated by the PKK organization in Turkey during 1994. Moreover, by letter dated 5 September 1995 a booklet entitled "Realities of Turkey for the West" was transmitted to the Working Group.

431. During the same period, the Government provided information with regard to 17 individual cases. In five cases the Government replied that there were no records of the detention or arrest of the disappeared person, while in six other cases the persons had already been released. In two cases, the Government stated that subject had been found dead and in another case, that an inquiry was being conducted. Three other persons were reportedly in detention and awaiting trial.

432. The Government of Turkey has not yet replied to the Working Group's request for a visit.

Observations

433. The Working Group continues to be concerned at the high number of recent cases of disappearances brought to its attention. It reminds the Government

of Turkey again of its responsibilities under the Declaration to prevent and terminate all acts of enforced disappearance and to bring the perpetrators to justice.

434. While the Working Group welcomes the cooperation of the Government, it wishes to state clearly that under article 7 of the Declaration, "no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances".

435. With respect to the Government's comments on the Working Group's last annual report concerning the credibility of the sources, the Working Group stresses that under its methods of work all allegations which contain certain minimum requirements are transmitted to the Government concerned. The Working Group is not in a position to make a value judgement on the source of information.

## Turkmenistan

436. During the period under review, the Working Group transmitted, for the first time, two cases of disappearance to the Government of Turkmenistan, which reportedly occurred in 1995 and were sent under the urgent action procedure. The cases concerned two journalists who were allegedly taken from their home by government agents in the days following the sweep of arrests of individuals who participated or were believed to have participated in a peaceful public demonstration held in the capital, Ashghabad, in July 1995.

437. At the time of the adoption of the present report, the Working Group had not received any information from the Government of Turkmenistan with regard to these cases. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared persons.

## Uganda

438. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Uganda.

439. All of the 20 reported cases of disappearance occurred between 1981 and 1985, i.e. before the present Government took office. The reported arrests or abductions occurred throughout the country and in one case the person was allegedly abducted while in exile in Kenya and taken to Kampala. One case concerned the 18-year-old daughter of an opposition member of the Ugandan Parliament. The arrests are said to have been made by either policemen, soldiers or officials of the National Security Agency.

440. During the period under review, the Government of Uganda requested an explanation concerning 13 cases on which it had previously provided information. The Working Group communicated to it that the information provided had been considered insufficient to clarify the cases in question, and recalled that the Group had requested more precise information from the Government, which it had not yet received.

441. During the period under review, the Government of Uganda replied to the questionnaire sent by the Working Group in 1994 on the implementation of the Declaration in which it stated that it had forwarded copies of the declaration to the Ministry of Justice, the Commissioner for Prisons, the Inspector-General of Police, the Inspector-General of Government and the courts of law. In its reply, the Government said that there was no provision for incommunicado detention in practice in Uganda and that "article 1040 of the Constitution gives the right to institute proceedings against Government by any person who wants to challenge the lawfulness of his or her detention and claim compensations". Furthermore, the Government's reply said that "information on the lawful detention of persons and their places of detention are promptly available to their family members and counsel and that an up-to-date official register of all persons deprived of their liberty in every place of detention is maintained by the authorities". With respect to arrest procedures, the Government said that the Uganda Code of Criminal Procedure gives and regulates powers of arrest to police officers and the Magistrates Courts Act contains provisions regulating arrest and search warrants.

Uruguay

442. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Uruguay.

443. The majority of the 39 cases of disappearance reported to the Working Group occurred between the years 1975 and 1978 under the military Government, in the context of its fight against alleged subversion. It should be noted that the Working Group has received no reports of disappearance in Uruguay after 1982.

444. On 10 May 1995, the Government of Uruguay informed the Working Group that it had undertaken steps with the Government of Argentina with a view to obtaining information which would permit it to resolve the four outstanding cases of Uruguayan citizens who had disappeared in Argentina.

Uzbekistan

445. During the period under review, the Working Group transmitted two newly reported cases of disappearance to the Government of Uzbekistan, which reportedly occurred in 1995 and was sent under the urgent action procedure. The cases concerned an Islamic religious leader and his assistant who were reportedly detained by the National Security Service in Tashkent as they were waiting to board an international flight.

446. The one other outstanding case transmitted in the past concerned the disappearance of the leader of the Islamic Renaissance Party, reportedly an unregistered political party, who was allegedly arrested in 1992 by men believed to be government agents.

447. In 1995, no new information was received from the Government of Uzbekistan with regard to the outstanding cases. The Working Group is, therefore, unable to report on the fate and whereabouts of the disappeared persons.

## Venezuela

448. During the period under review, the Working Group transmitted two newly reported cases of disappearance to the Government of Venezuela, one of which reportedly occurred in 1995 and was sent under the urgent action procedure.

449. Of the ten cases reported to the Working Group, four have been clarified. Three of the six outstanding cases occurred in December 1991 and concern student leaders who had reportedly been intercepted by security forces during a commercial fishing expedition. A fourth case concerned a businessman arrested in February 1991 in Valencia City, Carabobo, by the police.

450. Of the newly reported cases, one concerns a person who was allegedly detained at the end of February 1995 in the vicinity of Puerto Ayacucho, capital of the State of Amazonas, by members of the Navy Infantry, following incidents in which eight Venezuelan soldiers were reportedly ambushed and killed by Colombian guerrillas. The other concerns a 14-year-old girl who was allegedly abducted in March 1993 following a military raid on her house in the peasant community of 5 de Julio, municipality of Catatumbo, State of Zulia.

451. During the period under review, the Government of Venezuela provided the Working Group with information concerning the two newly reported cases. With regard to the case of the person detained in the vicinity of Puerto Ayacucho, the Government reported that a military court had ordered the detention of a naval lieutenant, a first class sergeant and two second class corporals for their presumed responsibility in the possible violation of human rights of inhabitants of the region affected by subversive action on the part of Colombian Brigands. It added that the proper functioning of the Venezuelan public institutions enables the investigation of any complaint of human rights violations. With regard to the disappearance of the 14-year-old girl, the Government reported that the brother of this person had stated before General Attorney No. 22 of the State of Zulia that his sister is currently living in liberty in Colombia.

## Yemen

452. During the period under review, no new cases of disappearances were transmitted by the Working Group to the Government of Yemen.

453. The majority of the 98 cases transmitted to the Government in the past occurred between January and April 1986 in the context of the fighting which took place during this time between supporters of President Ali Nasser Muhammad and his opponents. The President subsequently fled the country and his opponents took power. In the aftermath of the fighting, several suspected supporters of the former President were reportedly arrested and subsequently disappeared. The persons concerned are said to have been arrested either during the fighting on 13 January 1986 or in the period thereafter, between January and April 1986. The majority of the victims were members of the air force, the army or the security forces, but there were also civilians. Most of them were members of the Yemen Socialist Party. The forces said to be responsible for their arrest include the State security forces, the air force and the people's militia. One other case concerned the President of the Engineers' Union who was also said to be a member of the Central Committee of

the Yemen Socialist Party and who reportedly disappeared in August 1994. This case was clarified in 1994 when the person concerned was reported to have been released.

454. At its forty-sixth session, a representative from the Permanent Mission of Yemen to the United Nations Office at Geneva met with the Working Group and confirmed the willingness of his Government to cooperate with the Group. He said that his country attached a great deal of importance to the 97 outstanding cases of disappearance in Yemen. The Government understood the anguish of the family members and was aware of the social and humanitarian implications families of the disappeared have to deal with. In this regard the representative informed the Working Group that his Government had taken several measures to alleviate the suffering of individual families, such as providing them with financial assistance and subsidies.

## Zaire

455. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Zaire.

456. The majority of the 24 reported cases of disappearance occurred between 1975 and 1985 and concerned persons suspected of being members of a guerrilla group known as the Parti de la révolution populaire or of being political activists. More recent cases concern a journalist who was allegedly abducted from his home in 1993 by members of the Division spéciale présidentielle and the civil guard, and interrogated on the premises of the State radio station, Voix du Zaïre, and four men who were allegedly arrested in Likasi by soldiers and detained for almost two months before being transferred to Kinshasa; since then their whereabouts have remained unknown.

## Zimbabwe

457. During the period under review, no new cases of disappearance were transmitted by the Working Group to the Government of Zimbabwe.

458. The one outstanding case occurred in 1985 in the context of the armed conflict between government forces and political opponents in Matabeleland. It concerned a member of the Zapu political party who was reportedly arrested by four men (two of them in police uniform) while attending a church service and taken away in a police vehicle.

459. During the period under review, the Government provided information on the one case of disappearance in which it stated that, pursuant to the signing of the unity accord in 1987, it had decided to compensate all families with missing relatives, regardless of whether there were court proceedings concerning the circumstances of the disappearance. The subject's family was therefore awarded compensation and his case had been settled through the High Court. It further stated that since his disappearance occurred during the armed conflict, it was impossible to carry out an investigation as no documents had been kept from this period.

## III. COUNTRIES IN WHICH ALL REPORTED CASES OF DISAPPEARANCE HAVE BEEN CLARIFIED

### Bahrain

460. During the period under review, the Working Group transmitted, for the first time, one case of disappearance to the Government of Bahrain, which reportedly occurred in 1995 and was transmitted under the urgent action procedure. During the same period, the Working Group clarified this case when the source informed it of the specific location at which the person concerned was being held.

461. The newly reported case concerned a former judge, writer, religious scholar and, until its dissolution in 1975, a member of Parliament. The person concerned is said to have been one of six people who submitted a petition in 1992 calling on the Amir to reinstate the dissolved Parliament. Reportedly, the subject and his family had been placed under house arrest from 1 to 15 April 1995. Although the house arrest on his family was lifted the subject was taken into detention.

462. On 9 May 1995, the Government of Bahrain provided information on this case in which it reported that the person concerned was being held in a secure location, had been properly treated and was regularly attended by independent experts. The Working Group considered that this reply was insufficient to clarify the case, as it did not specify the exact place in which the person was being held.

### Nigeria

463. During the period under review, the Working Group transmitted two newly reported cases of disappearance to the Government of Nigeria, both of which reportedly occurred in 1995 and were sent under the urgent action procedure. The cases concerned two journalists who were detained by security forces, possibly because of reports in their publications of an alleged coup d'état attempt. During the same period, on the basis of information submitted by the Government and subsequently confirmed by the source, in which it was reported that the persons concerned had been released, the Working Group decided to consider the two cases clarified.

## IV. CONCLUSIONS AND RECOMMENDATIONS

464. Every single act of enforced disappearance is an offence to human dignity. It causes immense suffering to the victims, who are placed outside the protection of the law, kept ignorant of their fate, frequently tortured and constantly fearing for their lives. And it victimizes the family members who do not know whether their loved ones are still alive, and who often wait for many years, in a state alternating between hope and despair, without receiving any news.

465. The systematic practice of acts of enforced disappearance is of the nature of a crime against humanity. In addition to the revival of systematic torture and genocide, the practice of enforced disappearances is one of the most heinous "contributions" of human beings to the twentieth century, which is often referred to as the most violent in history.

466. The systematic practice of acts of enforced disappearance became known in the early 1970s as a phenomenon prevalent in a relatively small number of military dictatorships, above all in Latin America. Since then, it has spread to all regions of the world. Today, unfortunately, it must be considered a worldwide phenomenon, occurring primarily in the context of internal armed conflict and ethnic strife.

467. From its inception in 1980, the Working Group has dealt with some 50,000 individual cases pertaining to more than 70 countries. Only a very small fraction of these cases have been clarified, and the number of outstanding cases increases every year.

468. In recent years, enforced disappearances have occurred preponderantly in situations of social or ethnic tension or of internal armed conflict. In such circumstances, disappearances happen as a result of acts by security forces, or by groups or individuals with their support or acquiescence. In certain countries, responsibility for internal tension or social strife is borne by insurgent or terrorist groups, which generate a climate conducive to the breakdown of the institutional framework, to the militarization of society, to the weakening of the rule of law and human rights violations, including enforced disappearances. The Working Group recalls that under article 7 of the Declaration, "no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances".

469. Bearing in mind that, when applicable, international humanitarian law is an important instrument in alleviating suffering and diminishing abuses and human rights violations, the resolution of such conflicts and tensions is undoubtedly the best response to disappearances. In this context, the international community must contribute with its good offices to finding and implementing political settlements to such situations of conflict. Peace creates an appropriate environment for the enjoyment of human rights and for the clarification of pending cases. In connection with the role of the international community, the Working Group wishes to draw the Commission's attention to the relevance of human rights components of peace-keeping operations. Some of these operations, such as in Cambodia and El Salvador, have contained a strong human rights verification component that has

contributed to a considerable improvement in the human rights situation in those countries, including the strengthening and/or reform of national institutions such as the police, the army, the judiciary and national human rights institutions such as the Ombudsman. In the case of El Salvador, among other positive effects, no more cases of enforced disappearances have been verified in the last few years.

470. The Working Group is happy to note that more and more Governments are coming forward to cooperate with it in its attempts to deal effectively with the problem. It is the hope of the Working Group that such cooperation is a reflection of those Governments' rejection of the practice and their genuine determination to ensure that it no longer takes place within the territories under their control.

471. It is essential that the Working Group emphasize that cases of disappearance cannot be considered clarified until the whereabouts of the victims are known, whether or not they are still alive. The Working Group appreciates that a good number of cases occur in situations of conflict or war but it cannot, for that reason, consider a particular case clarified until the Government concerned reveals what may have happened to the victim, to the satisfaction of the families or relatives. In this connection, the Working Group considers the recent steps taken in this direction by the Government of Brazil as a very positive development.

472. The Commission is, therefore, faced with the urgent task of not only adopting effective preventive measures to ensure that all members of the international community ultimately refrain from indulging in the use of enforced or involuntary disappearances as an instrument of policy, but also of guaranteeing that the functions and responsibilities of the Working Group are well understood by them. In this connection, one cannot ignore the fact that a few Governments have established structures and mechanisms aimed at preventing the occurrence of involuntary disappearances in their countries and at clarifying already existing cases in conformity with the directives issued by the Working Group. The Group encourages other Governments to emulate these examples and also requests the Commission to do whatever it can towards that end. In this context, efforts to implement institutions such as the Ombudsman are especially relevant and deserve the full support of the international community. The Working Group would like to mention in particular the activities carried out by the National Commission for Human Rights of Mexico as a good example.

473. In addition to assisting family members and Governments in clarifying individual cases of disappearances, the Working Group in recent years, on instructions from the Commission, assumed the main responsibility for monitoring States' compliance with their obligations under the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly on 18 December 1992. Progress in the domestic implementation of the Declaration seems, however, to be extremely slow. Only very few countries, such as Colombia, Guatemala, Peru and Mexico, enacted special legislation in order to make the act of enforced disappearance a specific offence under criminal law and to implement other provisions. Most Governments seem not to be fully aware of their responsibilities under the Declaration. With a view to making the Declaration better known and to draw

Governments' attention to their responsibilities, the Working Group has begun to adopt general comments on specific provisions of the Declaration.

474. The cooperation which the Working Group enjoys from non-governmental human rights organizations concerned with the problem of disappearances is essential to its activities. These organizations have proved to be the conscience of the world community and their activities, far from being met with reprisals or condemnations, deserve the support of all concerned. It is the earnest hope of the Working Group that not only will such support and help be forthcoming from all sides, but also that more and more of these organizations will emerge in every country so that, assisted by them, the international community will soon be able to put behind it the problem of enforced or involuntary disappearances.

475. Finally, the Working Group wishes again to express its sincere gratitude and appreciation to its secretariat for its dedication in the pursuance of the very difficult tasks it has to deal with, while constantly in urgent need of additional resources. The Group avails itself of this opportunity to address another urgent call to the Commission in the hope that, with its deep understanding of the situation, it will meet the desperate needs of the secretariat by allocating more resources to it.

## V. ADOPTION OF THE REPORT

476. At the last meeting of its forty-fourth session, on 17 November 1995, the present report was adopted by the members of the Working Group on Enforced or Involuntary Disappearances:

| | |
|---|---|
| Ivan Tosevski<br>Chairman-Rapporteur | (the former Yugoslav Republic of Macedonia) |
| Agha Hilaly | (Pakistan) |
| Jonas K.D. Foli | (Ghana) |
| Diego García-Sayán | (Peru) |
| Manfred Nowak | (Austria) |

Annex I

METHODS OF WORK

Revision 2

1. The Working Group's methods of work are based on its mandate as stipulated originally in Commission on Human Rights resolution 20 (XXXVI) and as developed by the Commission in numerous further resolutions. The parameters of its work are laid down in the Charter of the United Nations, the International Bill of Human Rights, Economic and Social Council resolution 1235 (XLI) and the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly in its resolution 47/133 of 18 December 1992, (hereinafter referred to as the "Declaration").

2. As defined in the preambular part of resolution 47/133, enforced disappearances occur when "persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law".

3. The basic mandate of the Working Group is to assist families in determining the fate and whereabouts of their missing relatives who, having disappeared, are placed outside the protection of the law. To this end, the Working Group endeavours to establish a channel of communication between the families and the Governments concerned, with a view to ensuring that sufficiently documented and clearly identified individual cases which families, directly or indirectly, have brought to the Group's attention, are investigated and the whereabouts of the disappeared persons are clearly established as a result of investigations by the Government or the search of the family, irrespective of whether the person is alive or dead.

4. In addition to its original mandate, the Working Group has been entrusted by the Commission with various other tasks. In particular, the Working Group is to monitor States' compliance with their obligations deriving from the Declaration on the Protection of All Persons from Enforced Disappearance. States are under an obligation to take effective measures to prevent and terminate acts of enforced disappearance, by making them continuing offences under criminal law and establishing civil liability of those responsible. The Declaration also refers to the right to a prompt and effective judicial remedy, as well as unhampered access of national authorities to all places of detention, the right to habeas corpus, the maintenance of centralized registers of all places of detention, the duty to investigate fully all alleged cases of disappearance, the duty to try alleged perpetrators of acts of disappearance before ordinary (not military) courts, the exemption of the criminal offence of acts of enforced disappearance from statutes of limitations, special amnesty laws and similar measures leading to impunity. The Working Group reminds the Governments of these obligations not only in the

context of clarifying individual cases but also that of taking action of a more general nature. It draws the attention of Governments and non-governmental organizations to general or specific aspects of the Declaration, it recommends ways of overcoming obstacles to the realization of the Declaration; it discusses with representatives of Governments and non-governmental organizations how to solve specific problems in the light of the Declaration, it assists Governments by carrying out on-the-spot visits, organizing seminars and providing similar advisory services.

5. The Working Group does not deal with situations of international armed conflict, in view of the competence of the International Committee of the Red Cross (ICRC) in such situations, as established by the Geneva Conventions of 12 August 1949 and the Protocols additional thereto.

6. In transmitting cases of disappearance, the Working Group deals exclusively with Governments, basing itself on the principle that Governments must assume responsibility for any violation of human rights on their territory. Where, however, disappearances have been attributed to terrorist or insurgent movements fighting the Government on its own territory, the Working Group has refrained from processing them. The Group considers that, as a matter of principle, such groups may not be approached with a view to investigating or clarifying disappearances for which they are held responsible.

7. Reports on disappearances are considered admissible by the Working Group when they originate from the family or friends of the missing person. Such reports may, however, be channelled to the Working Group through representatives of the family, Governments, intergovernmental organizations, non-governmental organizations and other reliable sources. They must be submitted in writing with a clear indication of the identity of the sender; if the source is other than a family member it must be in a position to follow up with the relatives of the disappeared person concerning his fate.

8. In order to enable Governments to carry out meaningful investigations, the Working Group provides them with information containing at least a minimum of basic data. In addition, the Working Group constantly urges the senders of reports to furnish as many details as possible concerning the identity of the disappeared person and the circumstances of the disappearance. The Group requires the following minimum elements:

(a) Full name of the missing person;

(b) Date of disappearance, i.e., day, month and year of arrest or abduction, or day, month and year when the disappeared person was last seen. When the disappeared person was last seen in a detention centre, an approximate indication is sufficient (for example, March or spring 1990);

(c) Place of arrest or abduction or where the disappeared person was last seen (indication of town or village, at least);

(d) Parties presumed to have carried out the arrest or abduction or to be holding the disappeared person in unacknowledged detention;

(e) Steps taken by the family to determine the fate or whereabouts of the disappeared person or at least an indication that efforts to resort to domestic remedies were frustrated or have otherwise been inconclusive.

9. In the case of the disappearance of a pregnant woman, the child presumed to have been born during the mother's captivity would be mentioned in the description of the case of the mother. The child would be treated as a separate case when witnesses reported that the mother had actually given birth to a child during detention.

10. Reported cases of disappearances are placed before the Working Group for detailed examination during its sessions. Those which fulfil the requirements outlined above are transmitted, upon the Group's specific authorization, to the Governments concerned with the request that they carry out investigations and inform the Group about the results. These cases are communicated by letter from the Group's Chairman to the Government concerned through the Permanent Representative to the United Nations.

11. Cases that occurred within the three months preceding receipt of the report by the Group are transmitted directly to the Minister for Foreign Affairs of the country concerned by the most direct and rapid means. Their transmission can be authorized by the Chairman on the basis of a specific delegation of power given to him by the Group. Cases which occurred prior to the three-month limit but not more than one year before the date of their receipt by the Secretariat, provided that they had some connection with a case which occurred within the three-month period, can be transmitted between sessions by letter, upon authorization by the Chairman.

12. Reports on a disappearance indicating that officials from more than one country were directly responsible for or involved in the disappearance would be communicated to both the Government of the country where the disappearance occurred and the Government of the country whose officials or agents were alleged to have participated in the arrest or the abduction of the disappeared person. However, the case would only be counted in the statistics of the country in which the person was reportedly arrested, detained, abducted or last seen.

13. The Working Group reminds every Government concerned, at least once a year, of the cases which have not yet been clarified and, twice a year, of all urgent action cases transmitted during the preceding six months for which no clarification has been received. Furthermore, at any time during the year any Government may request, in writing, the summaries of cases that the Group has transmitted to it.

14. All replies received from Governments concerning reports of disappearances are examined by the Working Group and summarized in the Group's annual report to the Commission on Human Rights. Any information given on specific cases is forwarded to the senders of those reports, who are invited to make observations thereon or to provide additional details on the cases.

15. Any reply of the Government containing detailed information on the fate and whereabouts of a disappeared person is transmitted to the source. If the source does not respond within six months of the date on which the

Government's reply was communicated to it, or if it contests the Government's information on grounds which are considered unreasonable by the Working Group, the case is considered clarified and is accordingly listed under the heading "Cases clarified by the Government's responses" in the statistical summary of the annual report. If the source contests the Government's information on reasonable grounds, the Government is so informed and invited to comment.

16. The Working Group may consider a case clarified when the competent authority specified in the relevant national law pronounces, with the concurrence of the relatives and other interested parties, on the presumption of death of a person reported missing.

17. If a case is considered clarified but contains information relevant to other thematic mechanisms of the Commission, it is transmitted to the mechanism concerned.

18. If the sources provide well-documented information that a case has been considered clarified erroneously, because the Government's reply referred to a different person, does not correspond to the reported situation or has not reached the source within the six-month period referred to above, the Working Group transmits the case to the Government anew, requesting it to comment. In such instances the case in question is again listed among the outstanding cases and a specific explanation is given in the Group's report to the Commission on Human Rights, describing the above-mentioned errors or discrepancies.

19. Any substantive additional information which the sources submit on an outstanding case is placed before the Working Group and, following its approval, transmitted to the Government concerned. If the additional information received amounts to a clarification of the case, the Government is informed immediately without awaiting the Group's next session. Clarifications by the source are listed in the statistical summary under the heading "Cases clarified by non-governmental sources".

20. In exceptional circumstances, the Working Group may decide to delete from its files cases in which the families have manifested their desire not to pursue the case any further, or cases in which the source is no longer in existence or unable to follow-up the case.

21. The Working Group retains cases on its files for as long as the exact whereabouts of the disappeared persons have not been determined, in accordance with the criteria outlined in paragraphs 13 to 19 above. This principle is not affected by changes of Government in a given country.

22. The Working Group regularly transmits to the Governments concerned a summary of allegations received from relatives of missing persons and non-governmental organizations with regard to obstacles encountered in the implementation of the Declaration in their respective countries, inviting them to comment thereon if they so wish.

23. The Working Group carries out visits to countries on invitation, but also takes the initiative of approaching Governments with a view to carrying out visits to countries with a sizeable number of cases of disappearance. Such

visits are intended to enhance the dialogue between the authorities most directly concerned, the families or their representatives and the Working Group, and to assist in the clarification of the reported disappearances. The Working Group reports to the Commission on its country visits in an addendum to its annual report.

24. With regard to countries in which visits have been carried out, the Working Group periodically reminds Governments concerned of the observations and recommendations formulated in the respective reports, requesting information on the consideration given to them, and the steps taken for their implementation or the constraints which might have prevented their implementation.

25. Cases of intimidation, persecution or reprisals against relatives of missing persons, witnesses to disappearances or their families, members of organizations of relatives and other non-governmental organizations or individuals concerned with disappearances are transmitted to the pertinent Governments, with the appeal that they take steps to protect all the fundamental rights of the persons affected. Cases of that nature, which require prompt intervention, are transmitted directly to the Ministers for Foreign Affairs by the most direct and rapid means. To that end, the Working Group has authorized its Chairman to transmit such cases between sessions.

26. The Working Group meets three times a year to consider the information brought to its attention since its previous session. Its meetings are held in private. However, the Working Group regularly invites representatives of Governments, non-governmental organizations, family members and witnesses to meet with it.

27. The Working Group reports annually to the Commission on Human Rights on the activities which it has carried out since the Commission's previous session, up until the last day of the Working Group's third annual session. It informs the Commission of its communications with Governments and non-governmental organizations, its meetings and missions. Reports on missions are contained as an addendum to the main report. The Working Group reports on all cases of disappearance received by the Group during the year, on a country-by-country basis, and on the decisions it has taken thereon. It provides the Commission with a statistical summary for each country of cases transmitted to the Government, clarifications and the status of the person concerned on the date of clarification. It includes graphs showing the development of disappearances in countries with more than 50 transmitted cases, up to the date of the adoption by the Working Group of its annual report. The Working Group includes conclusions and recommendations in its report, and makes observations on the situation of disappearances in individual countries. The Group further reports on the implementation of the Declaration and the obstacles encountered therein, and periodically reports on broader issues surrounding the phenomenon of disappearances.

Annex II

DECISIONS ON INDIVIDUAL CASES TAKEN BY
THE WORKING GROUP DURING 1995

DECISIONS ON INDIVIDUAL CASES TAKEN BY THE WORKING GROUP DURING 1995

| Countries | Cases which allegedly occurred in 1995 | Cases transmitted to the Government during 1995 | | Clarifications by: | | Six-month rule |
|---|---|---|---|---|---|---|
| | | Urgent actions | Normal actions | Government | Non-governmental sources | |
| Afghanistan | - | - | - | - | - | - |
| Algeria | 20 | 2 | 101 | - | 1 | 1 |
| Angola | - | - | - | 3 | - | - |
| Argentina | - | - | - | - | - | - |
| Bahrain | 1 | 1 | - | - | 1 | - |
| Bolivia | - | - | - | - | - | - |
| Brazil | 2 | 3 | - | | - | - |
| Bulgaria | - | - | - | - | - | - |
| Burkina Faso | - | - | - | - | - | - |
| Burundi | - | - | 14 | - | - | - |
| Cameroon | - | - | - | - | - | - |
| Chad | - | - | - | - | - | - |
| Chile | - | - | - | 15 | 6 | - |
| China | 3 | 3 | - | 19 | 2 | - |
| Colombia | 16 | 20 | 13 | 1 | 1 | 4 |
| Dominican Republic | - | - | - | - | - | - |
| Ecuador | 3 | 3 | - | 2 | 2 | - |
| Egypt | - | - | 7 | - | - | - |

| Countries | Cases which allegedly occurred in 1995 | Cases transmitted to the Government during 1995 | | Clarifications by: | | Six-month rule |
|---|---|---|---|---|---|---|
| | | Urgent actions | Normal actions | Government | Non-governmental sources | |
| El Salvador | - | - | - | - | - | - |
| Equatorial Guinea | - | - | - | - | - | - |
| Ethiopia | - | - | - | 1 | - | - |
| Guatemala | 4 | 7 | - | 4 | 2 | 5 |
| Guinea | - | - | - | - | - | - |
| Greece | - | - | - | - | - | - |
| Haiti | - | - | - | - | - | - |
| Honduras | - | - | - | - | 1 | - |
| India | 5 | 5 | 5 | 1 | 2 | 3 |
| Indonesia | - | - | - | 2 | - | - |
| Iran (Islamic Republic of) | 1 | 1 | - | - | - | 11 |
| Iraq | - | - | 226 | - | - | 13 |
| Israel | - | - | 1 | - | 1 | - |
| Kazakhstan | - | - | - | - | - | - |
| Kuwait | - | - | - | - | - | - |
| Lao People's Democratic Republic | - | - | - | - | - | - |
| Lebanon | - | - | 30 | - | - | - |

| Countries | Cases which allegedly occurred in 1995 | Cases transmitted to the Government during 1995 | | Clarifications by: | | Six-month rule |
|---|---|---|---|---|---|---|
| | | Urgent actions | Normal actions | Government | Non-governmental sources | |
| Libyan Arab Jamahiriya | - | - | -- | - | - | - |
| Mauritania | - | - | - | - | - | - |
| Mexico | 21 | 23 | - | 15 | 5 | 13 |
| Morocco | - | - | 2 | 50 | - | - |
| Mozambique | - | - | - | - | - | - |
| Myanmar | - | - | - | - | - | - |
| Nepal | - | - | - | - | - | - |
| Nicaragua | - | 1 | 1 | - | - | - |
| Nigeria | 2 | 2 | - | 2 | - | - |
| Pakistan | 31 | 32 | - | - | - | - |
| Paraguay | - | - | - | - | - | - |
| Peru | 3 | 2 | 1 | 1 | 2 | 9 |
| Philippines | 1 | 1 | - | 3 | - | 12 |
| Romania | - | - | - | - | - | - |
| Rwanda | - | - | - | - | - | - |
| Saudi Arabia | - | - | - | - | - | - |
| Seychelles | - | - | - | - | - | - |
| South Africa | - | - | - | - | - | - |
| Sri Lanka | 36 | 36 | 4 | 3 | - | - |
| Sudan | 252 | 2 | 252 | - | 1 | - |

| Countries | Cases which allegedly occurred in 1995 | Cases transmitted to the Government during 1995 | | Clarifications by: | | Six-month rule |
|---|---|---|---|---|---|---|
| | | Urgent actions | Normal actions | Government | Non-governmental sources | |
| Syrian Arab Republic | - | - | - | - | - | 2 |
| Tajikistan | - | - | - | - | - | - |
| Thailand | - | - | - | - | - | - |
| Togo | - | - | - | - | - | - |
| Turkey | 9 | 14 | 3 | 13 | 7 | - |
| Turmenistan | 2 | 2 | - | - | - | - |
| Uganda | - | - | - | - | - | - |
| Uruguay | - | - | - | - | - | - |
| Uzbekistan | 2 | 2 | - | - | - | - |
| Venezuela | 1 | 1 | 1 | - | - | 1 |
| Yemen | - | - | - | - | - | - |
| Zaire | - | - | - | - | - | - |
| Zimbabwe | - | - | - | - | - | - |

Annex III

STATISTICAL SUMMARY: CASES OF ENFORCED OR INVOLUNTARY DISAPPEARANCES REPORTED TO THE WORKING GROUP BETWEEN 1980 AND 1995

STATISTICAL SUMMARY

Cases of involuntary disappearances reported to the Working Group between 1980 and 1995

| Countries | Cases transmitted to the Government | | | | Clarifications by | | Status of person at date of clarification | | |
|---|---|---|---|---|---|---|---|---|---|
| | Total | | Outstanding | | Government | Non-governmental sources | At liberty | In detention | Dead |
| | No. of cases | Female | No. of cases | Female | | | | | |
| Afghanistan | 2 | - | 2 | - | - | - | - | - | - |
| Algeria | 104 | 2 | 103 | 2 | - | 1 | 1 | - | - |
| Angola | 7 | 1 | 4 | 1 | 3 | - | - | - | 3 |
| Argentina | 3 462 | 771 | 3 385 | 750 | 43 | 34 | 49 | - | 28 |
| Bahrain | 1 | - | 0 | - | - | 1 | | 1 | - |
| Bolivia | 48 | 5 | 28 | 2 | 19 | 1 | 19 | | 1 |
| Brazil | 57 | 3 | 51 | 3 | 5 | 1 | 1 | 2 | 3 |
| Bulgaria | 3 | - | 0 | - | 3 | - | - | - | 3 |
| Burkina Faso | 3 | - | 3 | - | - | - | - | - | - |
| Burundi | 45 | - | 45 | - | - | - | - | - | - |
| Cameroon | 6 | - | 6 | - | - | - | - | - | - |
| Chad | 6 | - | 5 | - | 1 | - | - | - | 1 |
| Chile | 912 | 68 | 868 | 68 | 21 | 23 | 2 | - | 42 |
| China | 56 | 5 | 11 | 2 | 39 | 6 | 35 | 9 | 1 |
| Colombia | 949 | 84 | 744 | 69 | 153 | 52 | 126 | 18 | 61 |
| Dominican Republic | 4 | - | 2 | - | 2 | - | 2 | - | - |
| Ecuador | 20 | 2 | 5 | 0 | 11 | 4 | 3 | 6 | 6 |
| Egypt | 15 | - | 13 | - | 2 | - | - | 2 | - |

| Countries | Cases transmitted to the Government | | | | Clarifications by | | Status of person at date of clarification | | |
|---|---|---|---|---|---|---|---|---|---|
| | Total | | Outstanding | | Government | Non-governmental sources | At liberty | In detention | Dead |
| | No. of cases | Female | No. of cases | Female | | | | | |
| El Salvador | 2 638 | 329 | 2 259 | 293 | 318 | 61 | 190 | 175 | 14 |
| Equatorial Guinea | 3 | - | 3 | - | - | - | - | - | - |
| Ethiopia | 101 | 2 | 100 | 1 | 1 | - | 1 | - | - |
| Guatemala | 3 151 | 396 | 3 012 | 373 | 61 | 78 | 85 | 6 | 48 |
| Guinea | 28 | - | 21 | - | - | 7 | - | - | 7 |
| Greece | 2 | - | 2 | - | - | - | - | - | - |
| Haiti | 48 | 1 | 38 | - | 9 | 1 | 5 | 4 | 1 |
| Honduras | 196 | 34 | 129 | 21 | 30 | 38 | 48 | 13 | 7 |
| India | 232 | 8 | 201 | 7 | 25 | 6 | 9 | 5 | 17 |
| Indonesia | 418 | 30 | 368 | 27 | 38 | 12 | 40 | 8 | 2 |
| Iran (Islamic Republic of) | 509 | 98 | 508 | 98 | - | 1 | - | 1 | - |
| Iraq | 16 131 | 2 291 | 16 007 | 2 274 | 107 | 17 | 100 | 3 | 21 |
| Israel | 3 | - | 2 | - | - | 1 | - | - | 1 |
| Kazakhstan | 2 | - | 2 | - | - | - | - | - | - |
| Kuwait | 1 | - | 1 | - | - | - | - | - | - |
| Lao People's Democratic Republic | 1 | - | 1 | - | - | - | - | - | - |
| Lebanon | 279 | 15 | 274 | 15 | - | 5 | 5 | - | - |
| Libyan Arab Jamahiriya | 1 | - | 1 | - | - | - | - | - | - |

| Countries | Cases transmitted to the Government | | | | Clarifications by | | Status of person at date of clarification | | |
|---|---|---|---|---|---|---|---|---|---|
| | Total | | Outstanding | | Government | Non-governmental sources | At liberty | In detention | Dead |
| | No. of cases | Female | No. of cases | Female | | | | | |
| Mauritania | 1 | - | 1 | - | - | | | | |
| Mexico | 314 | 24 | 243 | 20 | 62 | 9 | 24 | 5 | 42 |
| Morocco | 233 | 28 | 157 | 26 | 50 | 26 | 61 | 1 | 14 |
| Mozambique | 1 | - | 1 | - | - | - | - | - | - |
| Myanmar | 2 | - | 0 | - | 2 | - | 1 | 1 | - |
| Nepal | 6 | - | 5 | - | - | 1 | 1 | - | - |
| Nicaragua | 234 | 4 | 103 | 2 | 112 | 19 | 45 | 11 | 75 |
| Nigeria | 5 | 1 | 0 | - | 5 | - | 5 | - | - |
| Pakistan | 53 | - | 52 | - | 1 | - | 1 | - | - |
| Paraguay | 23 | 1 | 3 | - | 20 | - | 19 | - | 1 |
| Peru | 2 879 | 305 | 2 253 | 231 | 245 | 381 | 440 | 84 | 102 |
| Philippines | 647 | 80 | 507 | 60 | 109 | 31 | 100 | 17 | 23 |
| Romania | 1 | - | 0 | - | 1 | - | 1 | - | - |
| Rwanda | 8 | - | 8 | - | - | - | - | - | - |
| Saudi Arabia | 1 | - | 1 | - | - | - | - | - | - |
| Seychelles | 3 | - | 3 | - | - | - | - | - | - |
| South Africa | 11 | - | 7 | - | 2 | 2 | 1 | 1 | 2 |
| Sri Lanka | 11 479 | 127 | 11 415 | 125 | 30 | 34 | 31 | 17 | 16 |
| Sudan | 260 | 33 | 257 | 33 | - | 3 | 3 | - | - |
| Syrian Arab Republic | 35 | 3 | 15 | 3 | 7 | 13 | 15 | 5 | - |

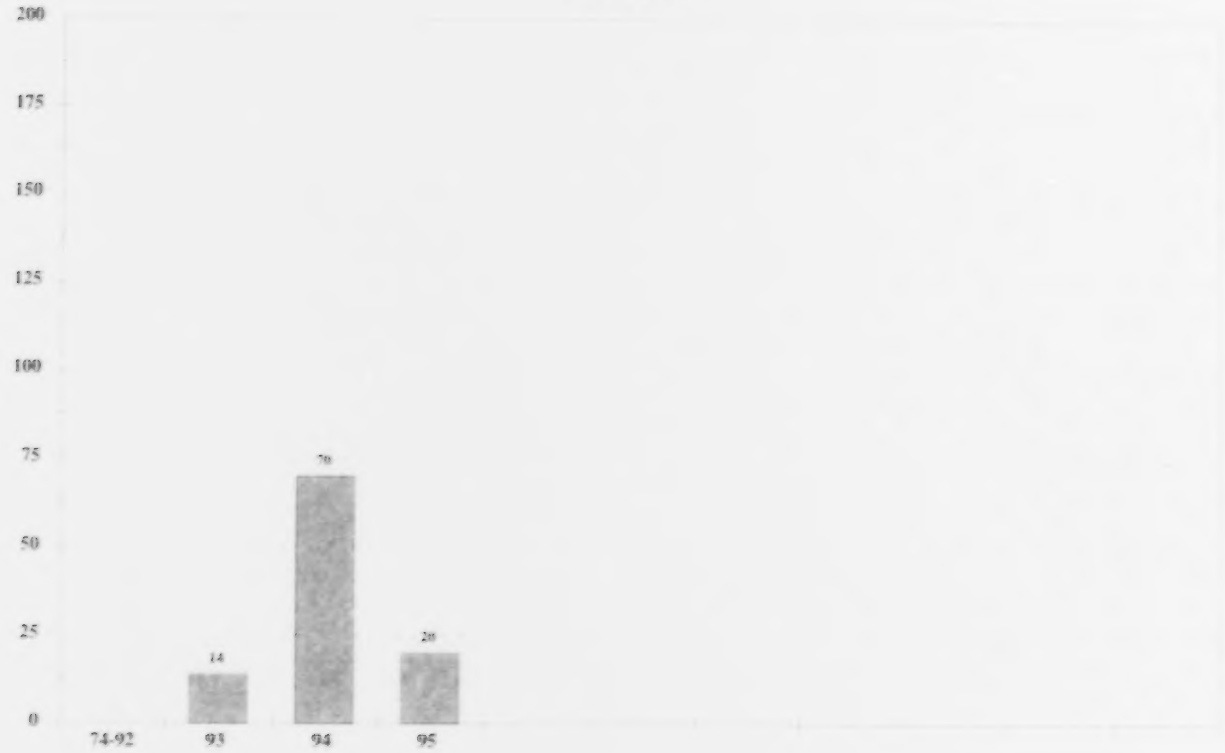
| Countries | Cases transmitted to the Government | | | | Clarifications by | | Status of person at date of clarification | | |
|---|---|---|---|---|---|---|---|---|---|
| | Total | | Outstanding | | Government | Non-governmental sources | At liberty | In detention | Dead |
| | No. of cases | Female | No. of cases | Female | | | | | |
| Tajikistan | 6 | - | 5 | - | - | 1 | - | - | 1 |
| Thailand* | 2* | - | 0 | - | - | - | - | - | - |
| Togo | 11 | 2 | 10 | 2 | - | 1 | 1 | - | - |
| Turkey | 132 | 10 | 73 | 4 | 24 | 36 | 41 | 9 | 10 |
| Turkmenistan | 2 | 0 | 2 | 0 | - | - | - | - | - |
| Uganda | 20 | 4 | 13 | 2 | 2 | 5 | 1 | 5 | 1 |
| Uruguay | 39 | 7 | 31 | 4 | 1 | 7 | 4 | 4 | - |
| Uzbekistan | 3 | - | 3 | - | - | - | - | - | - |
| Venezuela | 10 | 2 | 6 | 1 | 4 | - | 1 | - | 3 |
| Yemen | 98 | - | 97 | - | - | 1 | 1 | - | - |
| Zaire | 24 | 1 | 18 | 1 | 6 | - | 6 | - | - |
| Zimbabwe | 1 | - | 1 | - | - | - | - | - | - |

* At its forty-fifth session the Working Group decided to delete the two cases from its file, since the source was no longer in contact with the families.

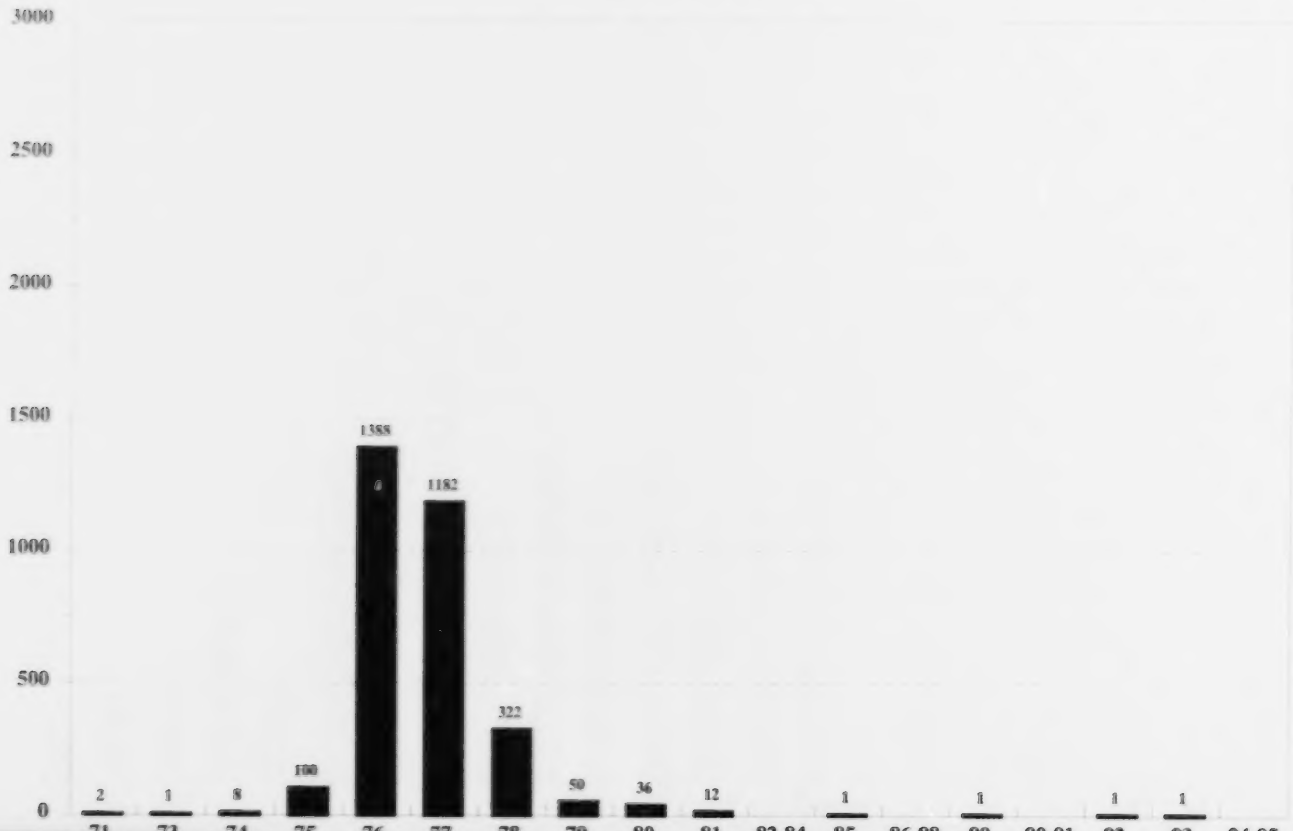
Annex IV

GRAPHS SHOWING THE DEVELOPMENT OF DISAPPEARANCES IN COUNTRIES WITH MORE THAN 100 TRANSMITTED CASES DURING THE PERIOD 1974-1995

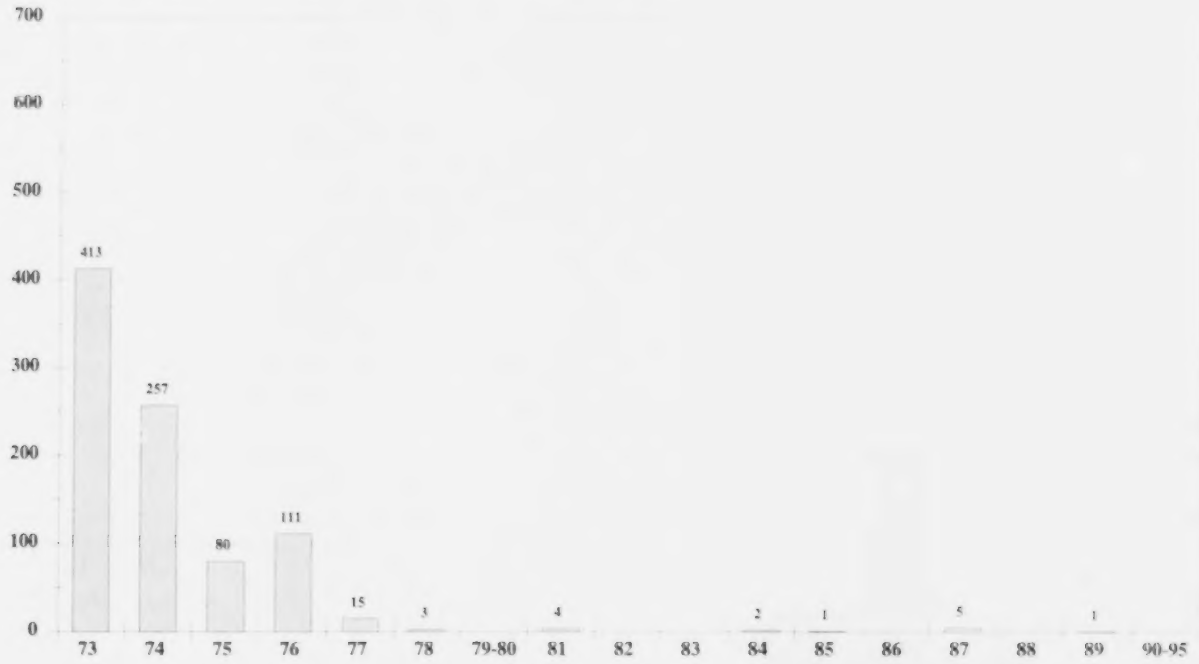
## ALGERIA



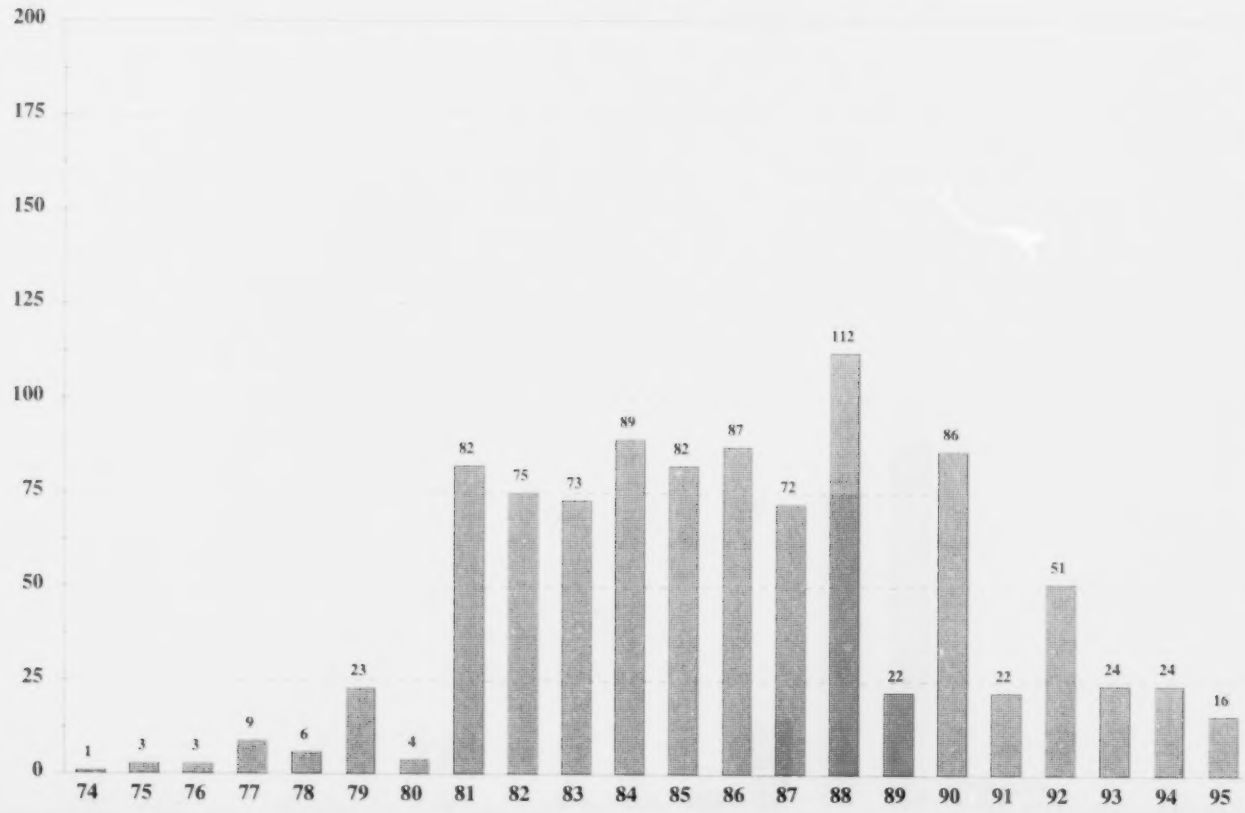

## ARGENTINA



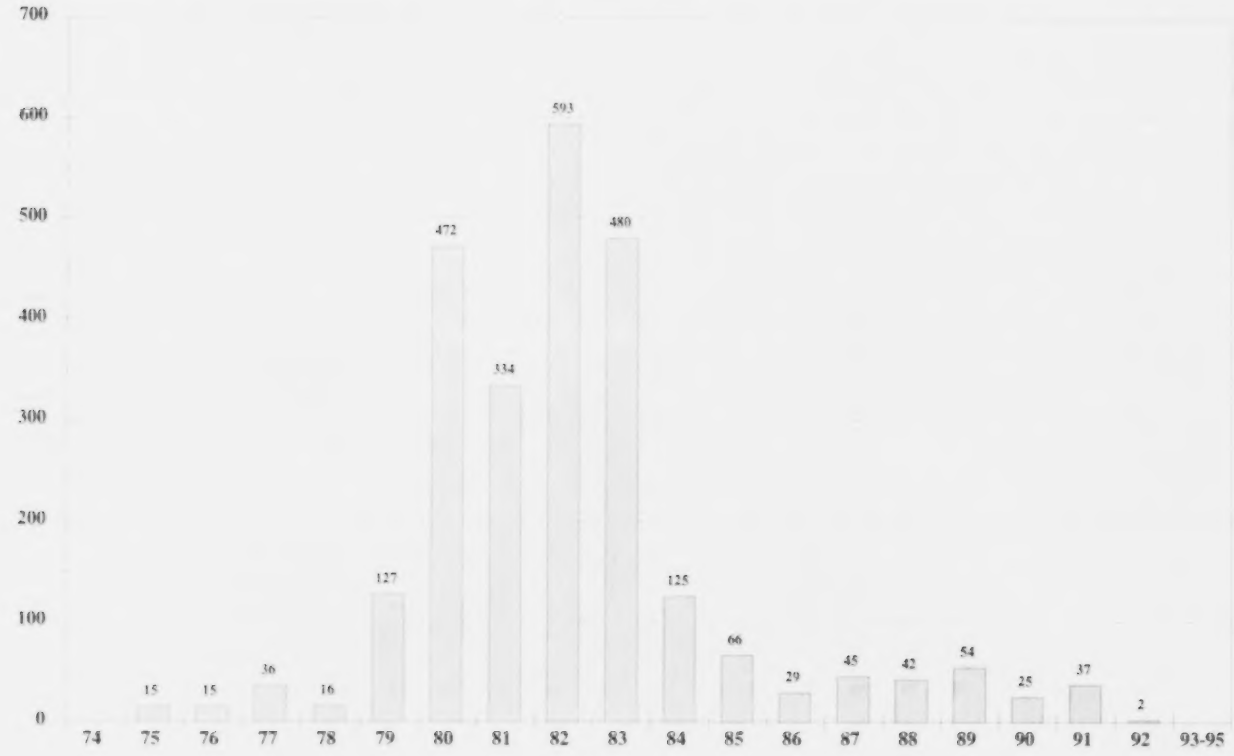
## CHILE




## COLOMBIA

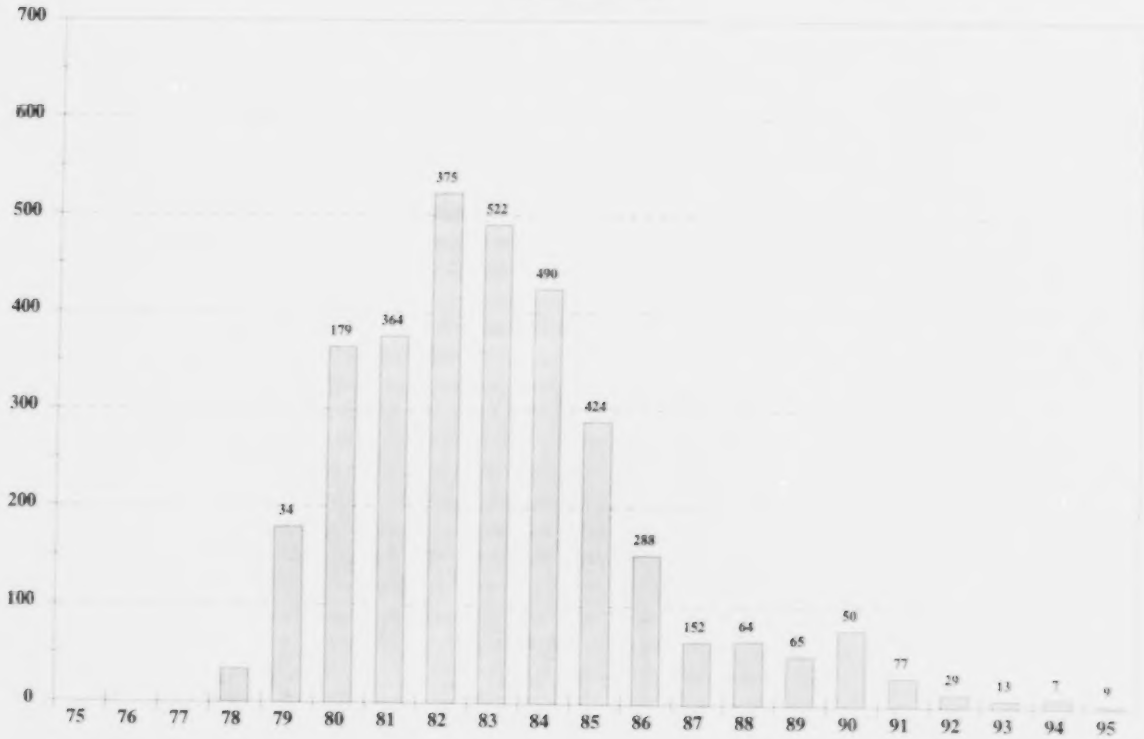


## EL SALVADOR

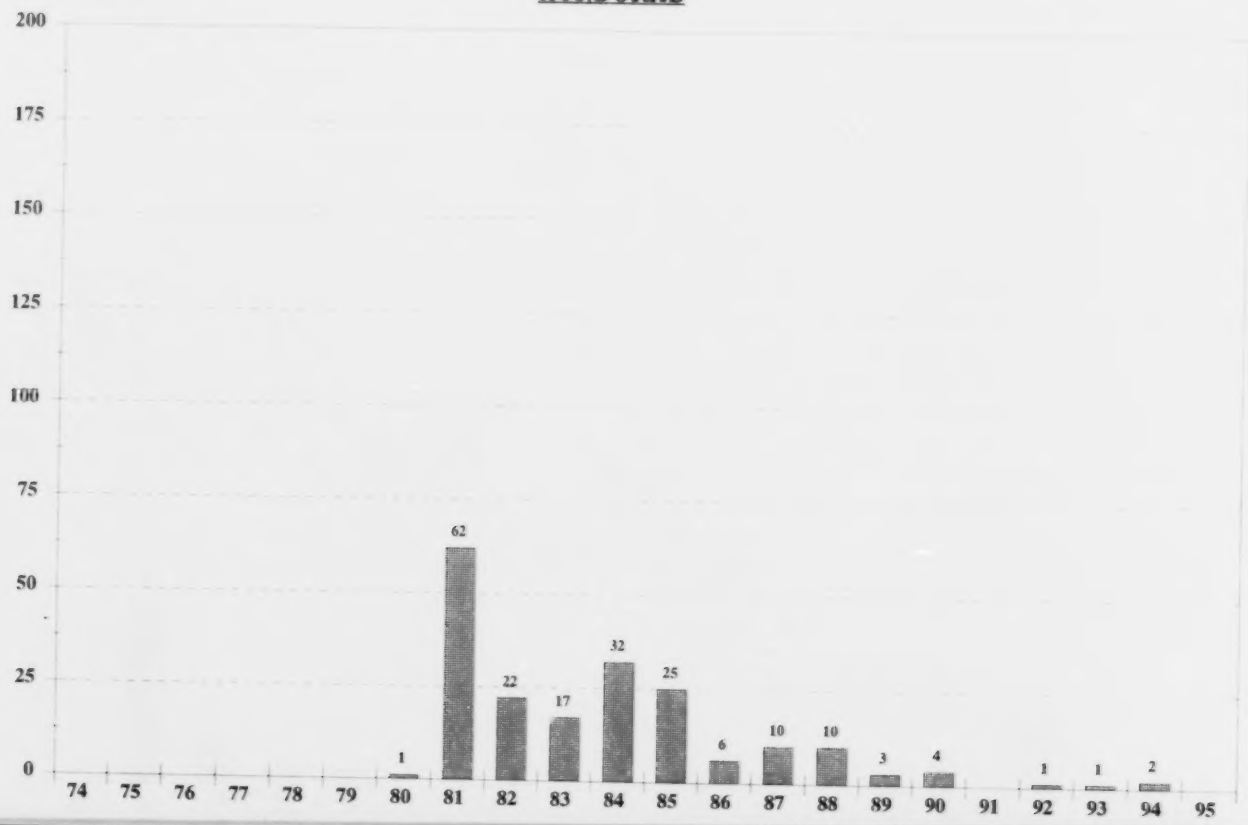



## ETHIOPIA

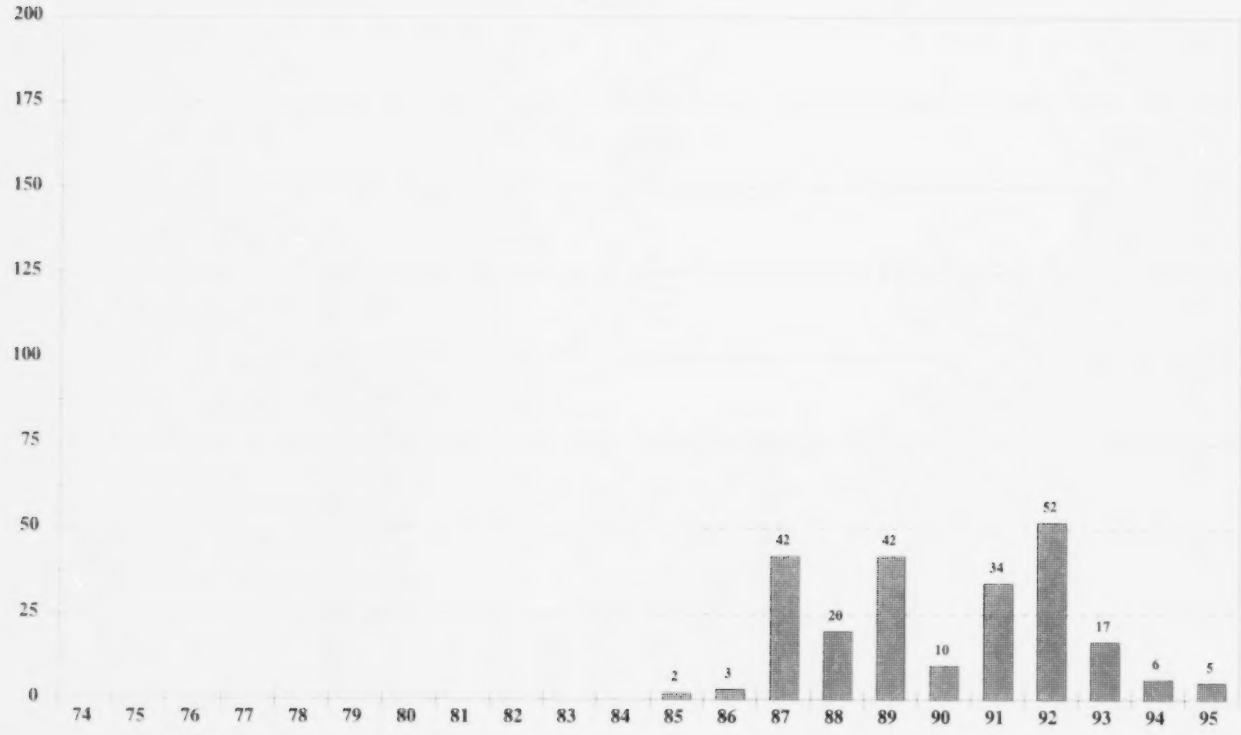
**GUATEMALA**



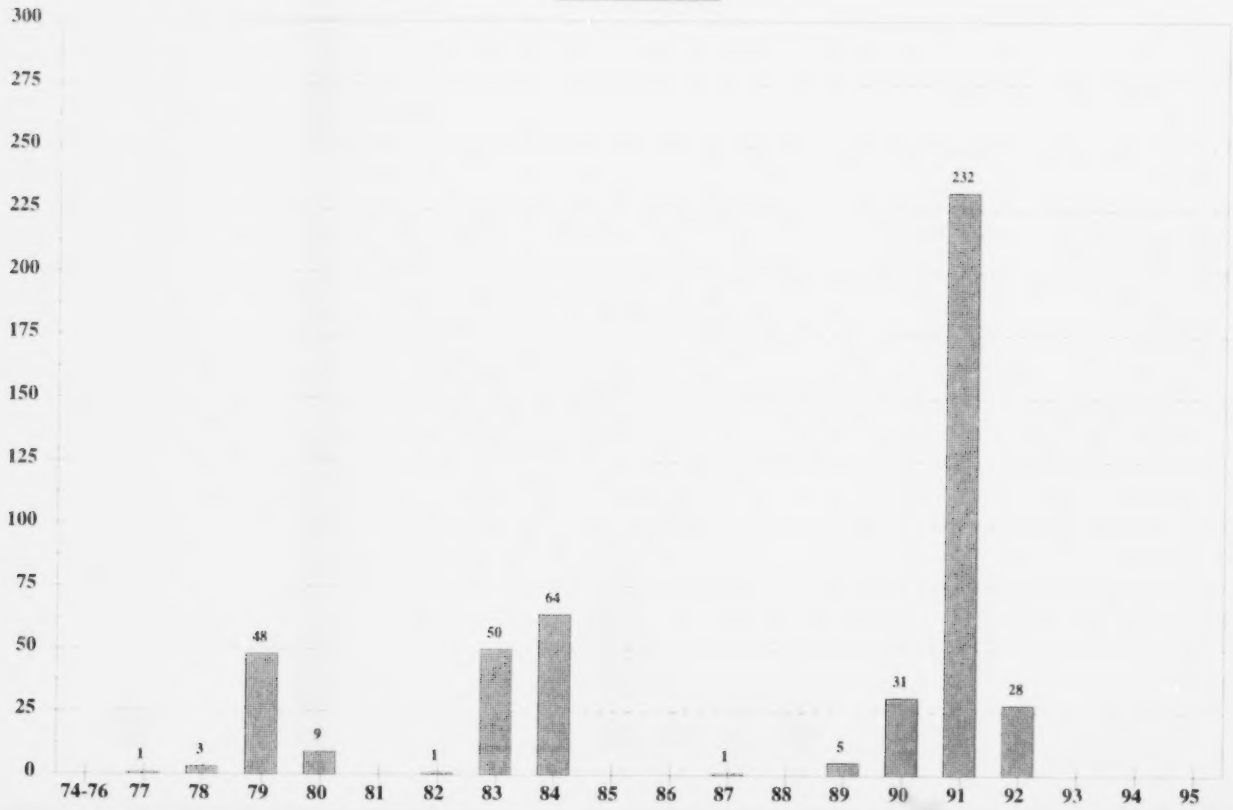

**HONDURAS**



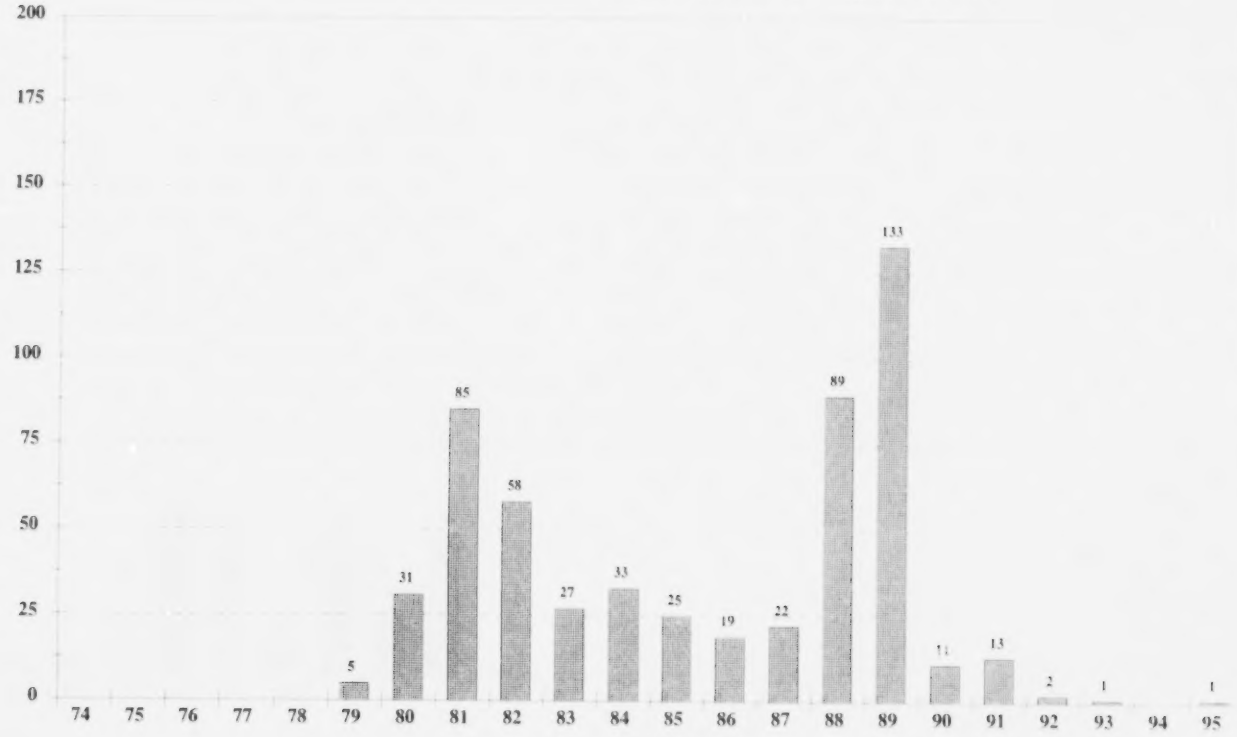
## INDIA



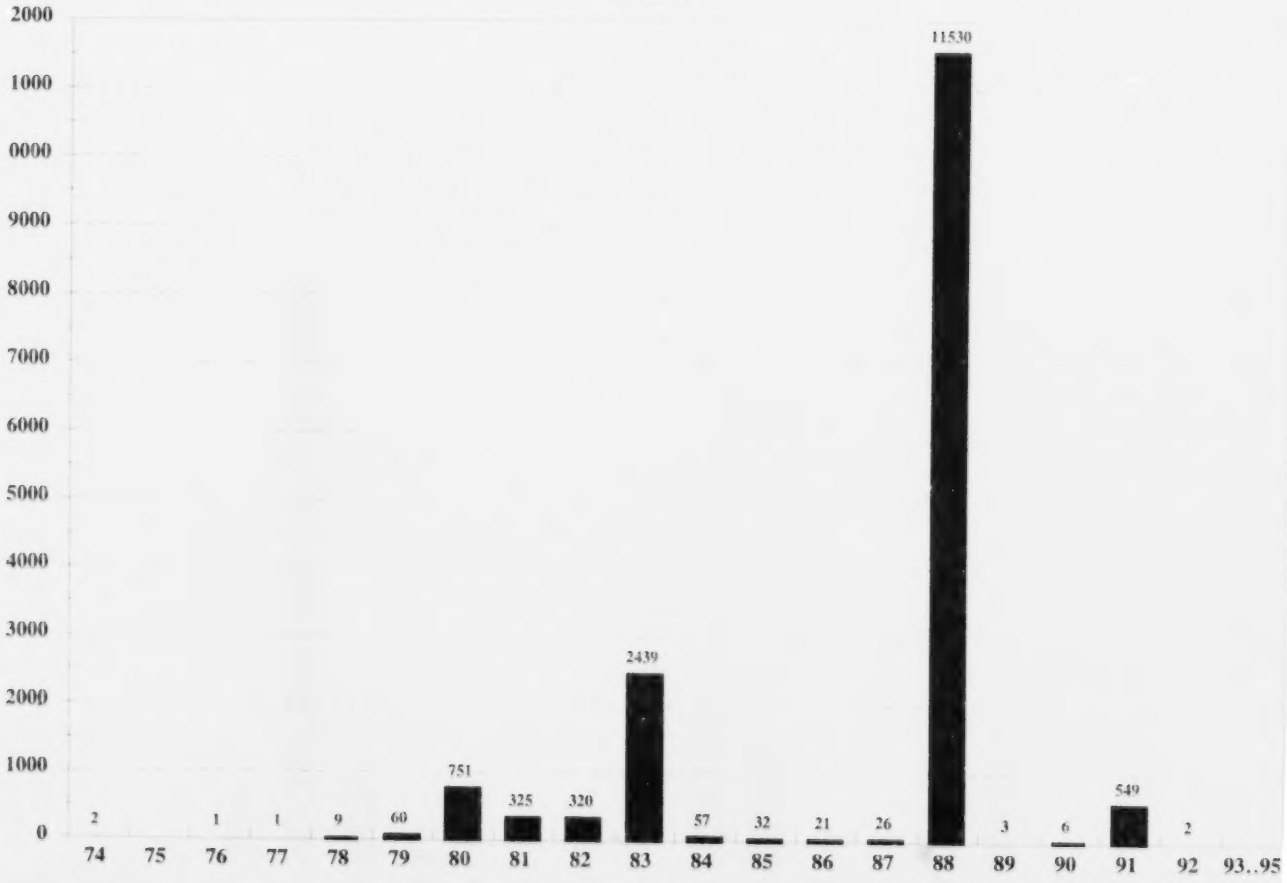

## INDONESIA



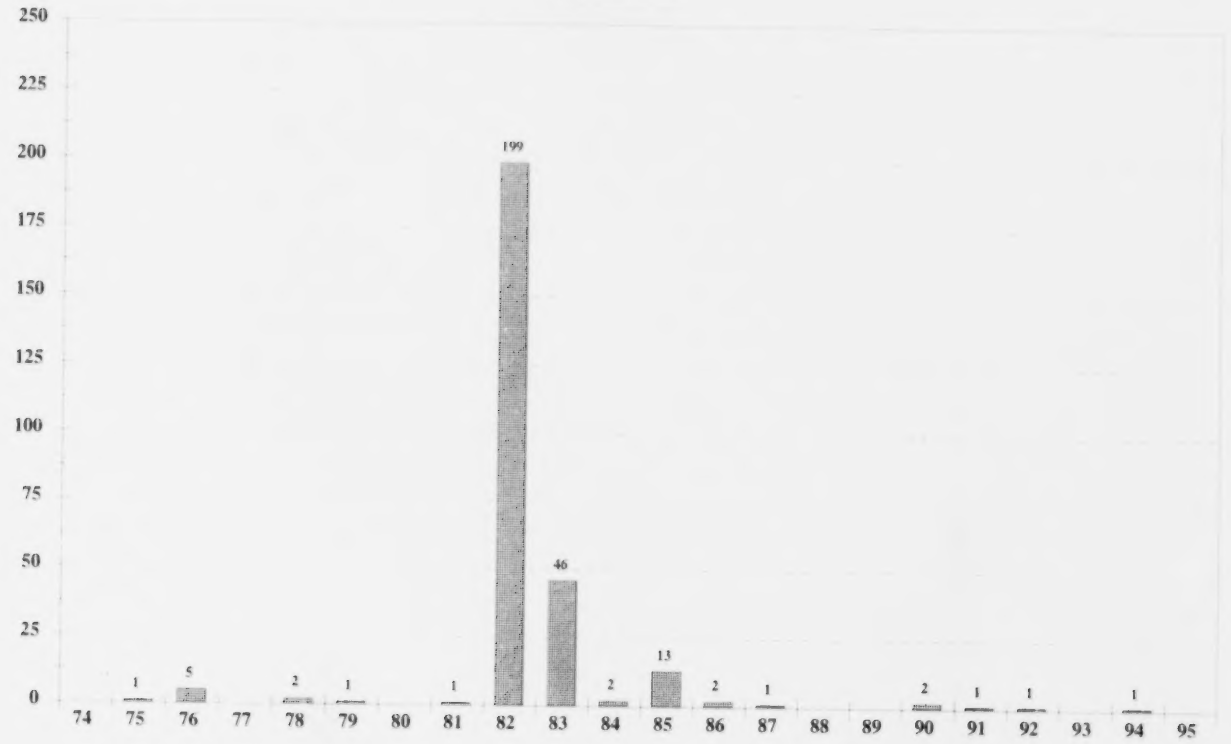
**IRAN** (Islamic Republic of)



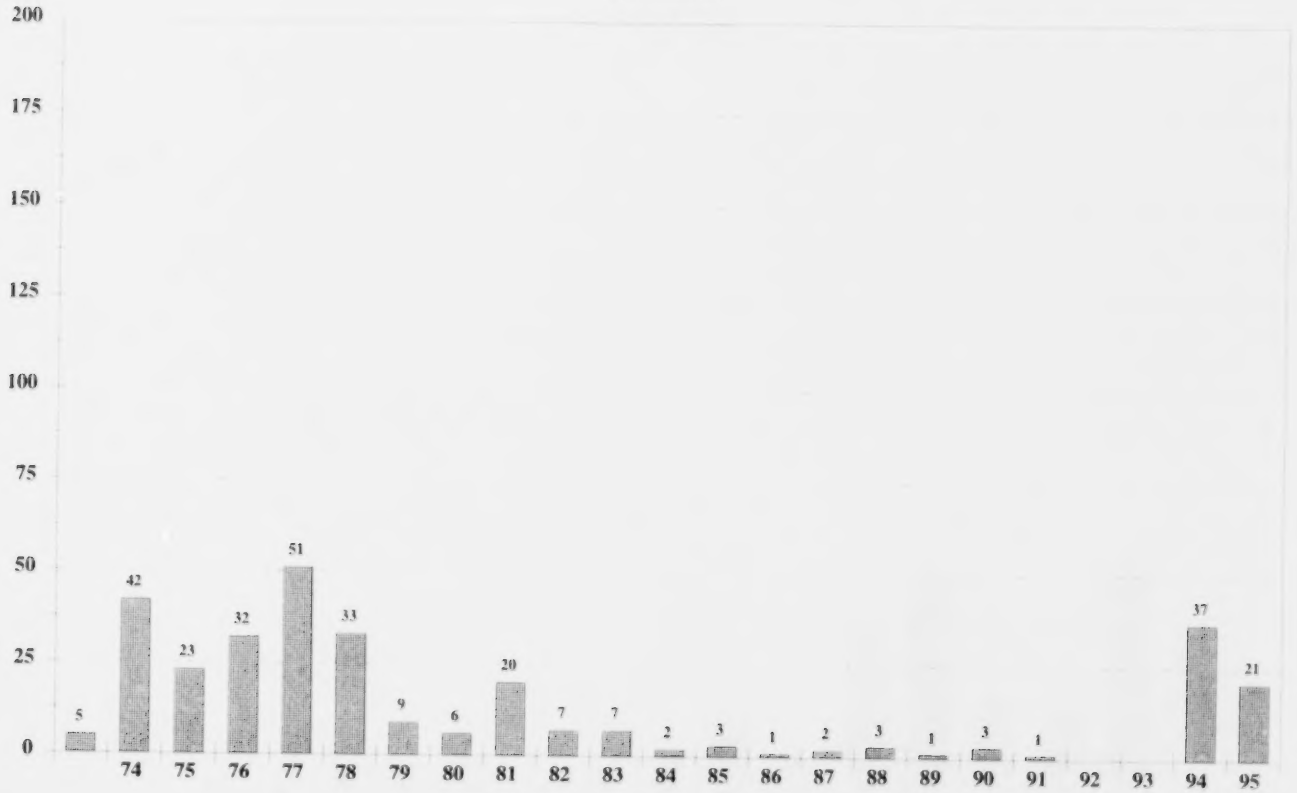

**IRAQ**



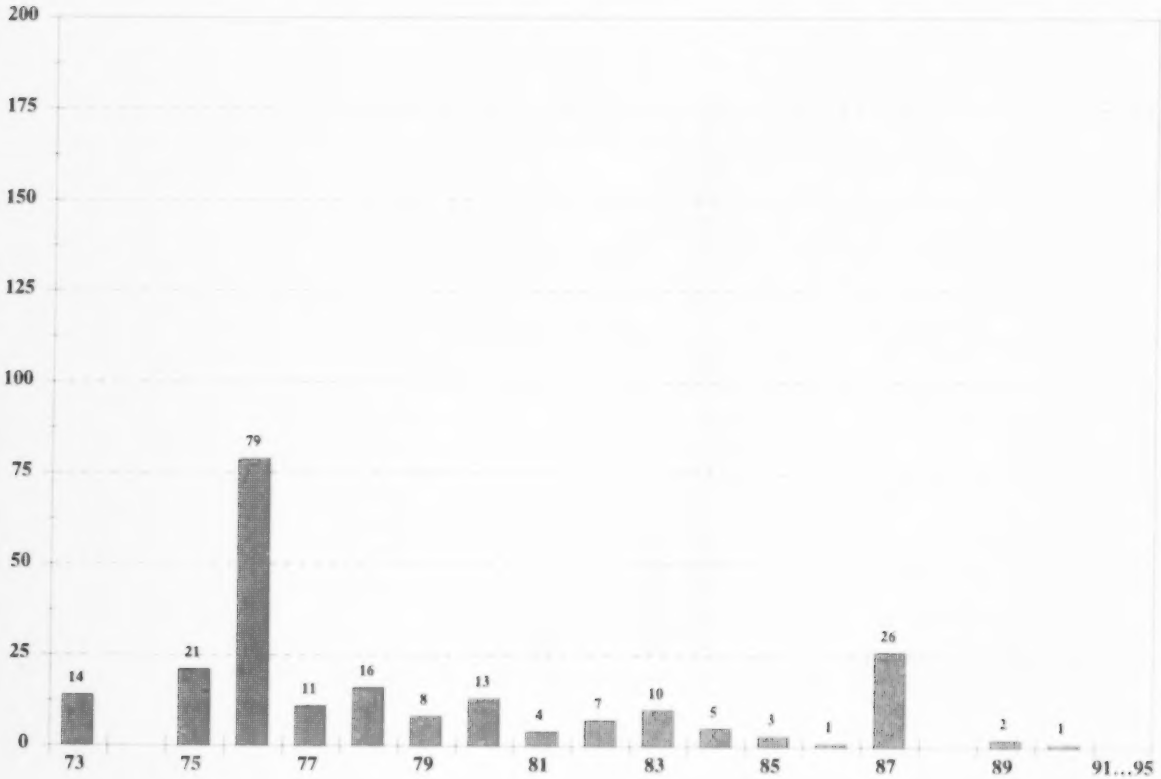
## LEBANON



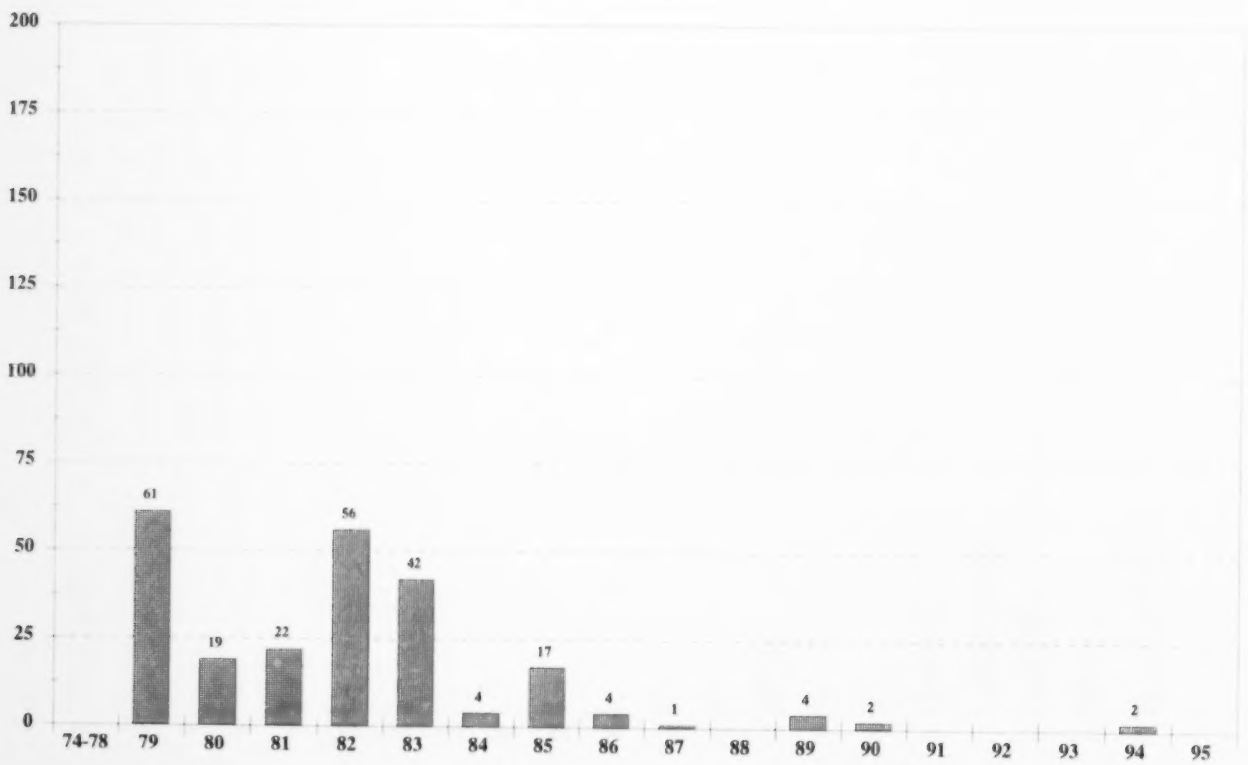

## MEXICO



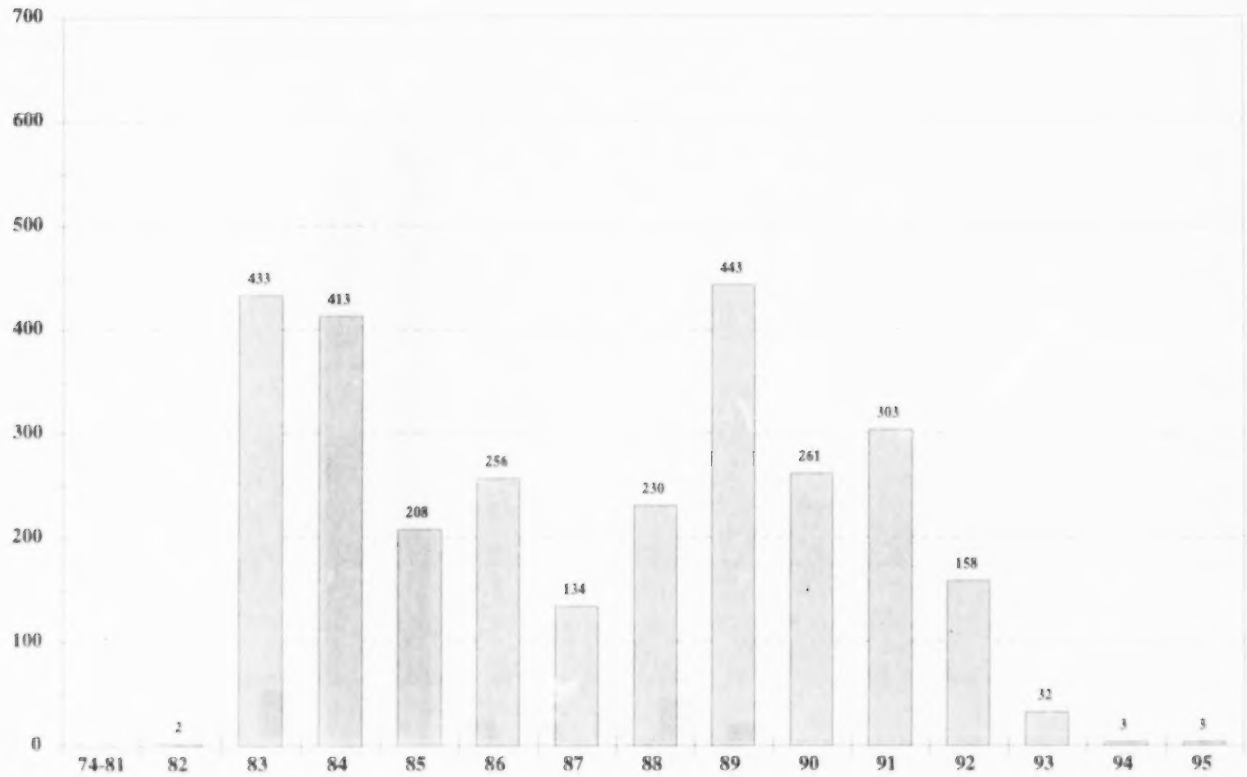
MOROCCO



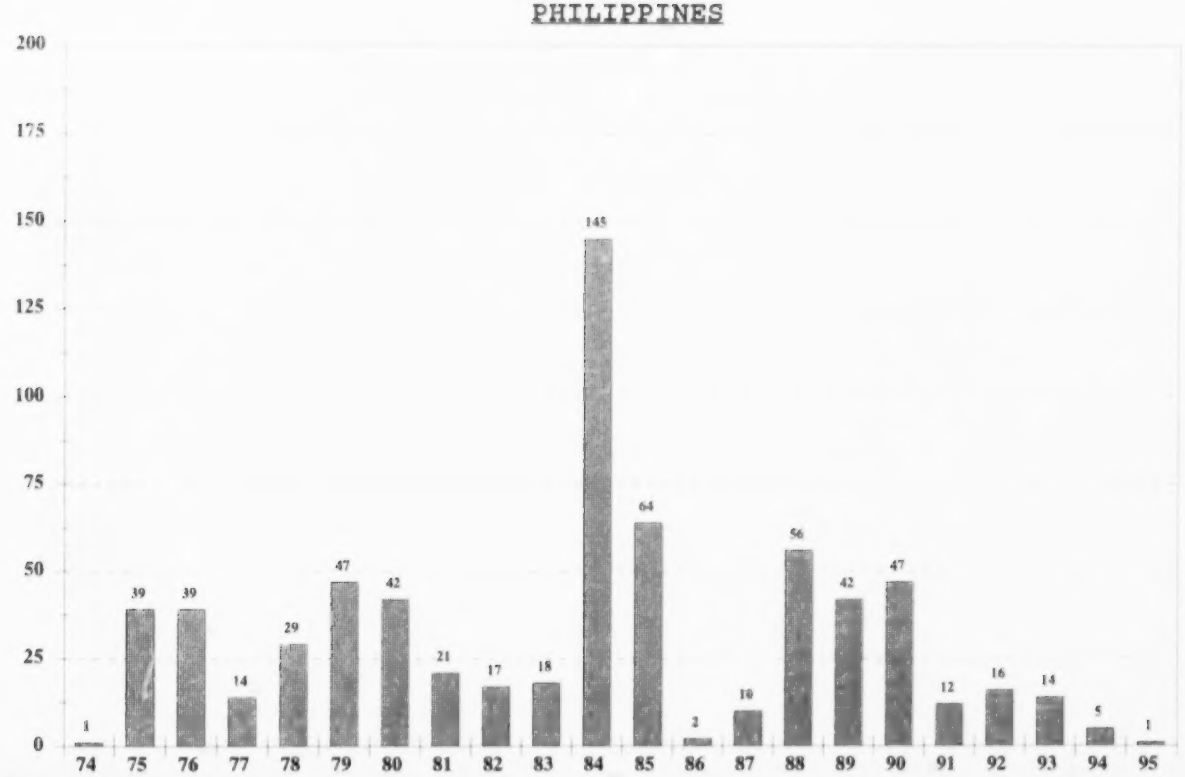

NICARAGUA



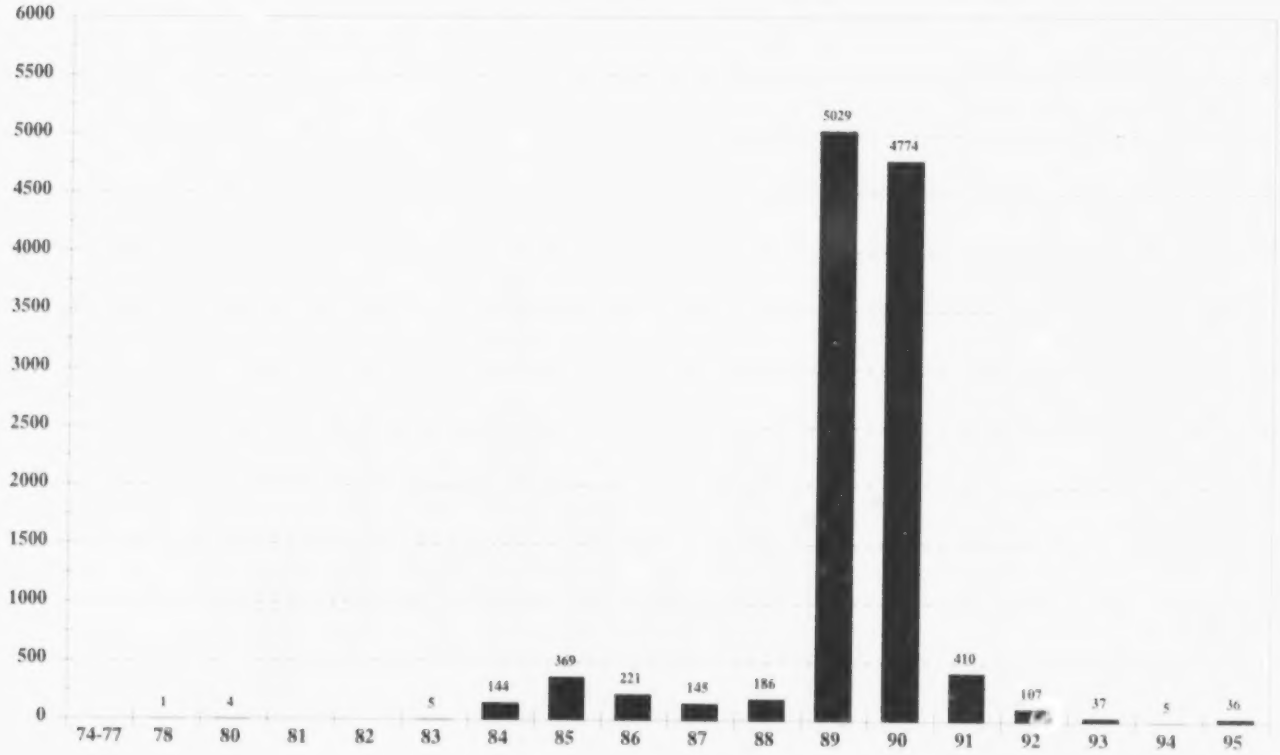
**PERU**



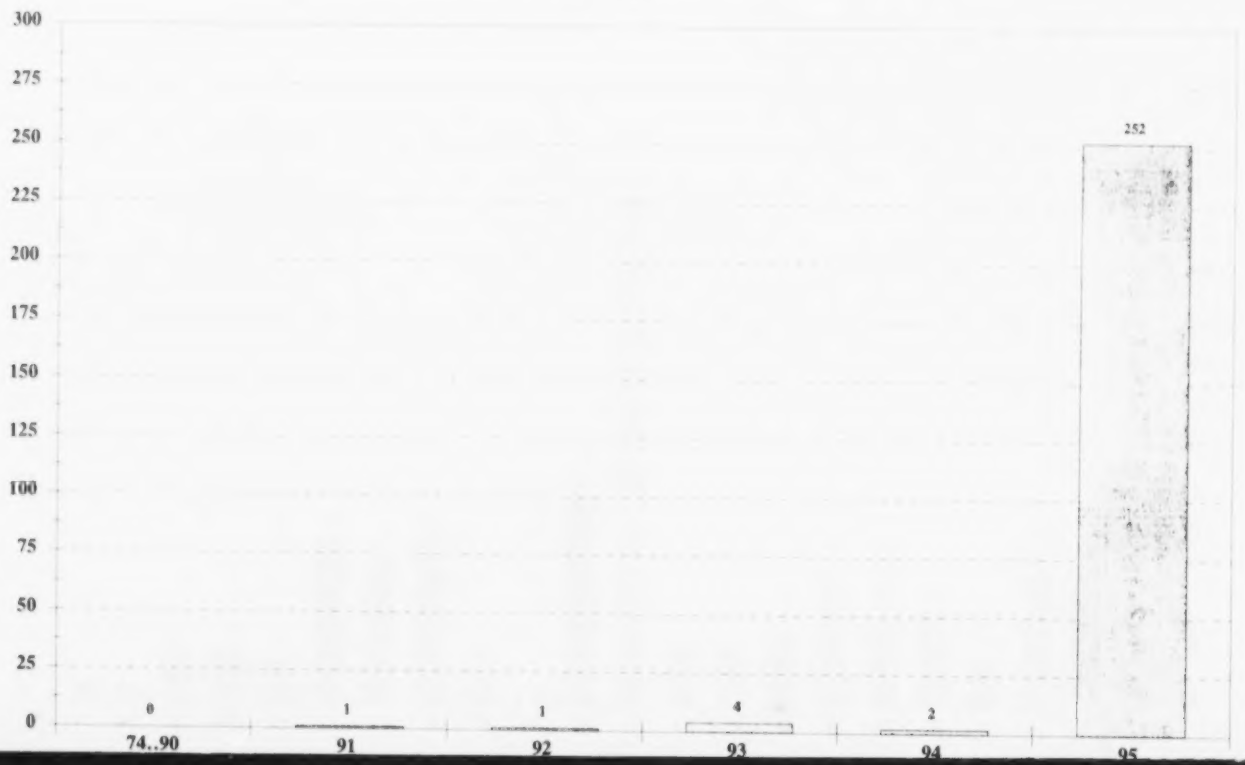

**PHILIPPINES**



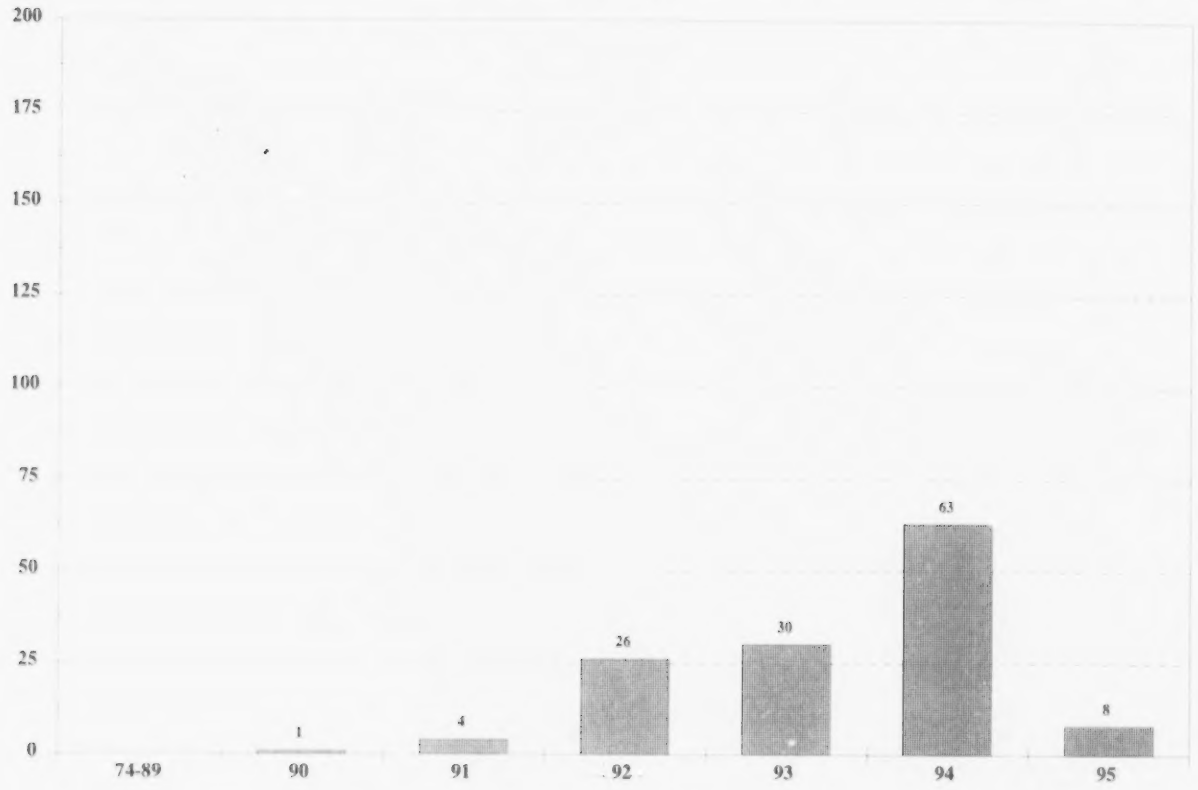
## SRI LANKA




## SUDAN



**TURKEY**

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